

1 control a substance which is legal. Thank you.

2 MS. ELAINE PATRICK: Mr. Downin?

3 MR. RICHARD DOWNIN: Yes?

4 MS. ELAINE PATRICK: What clubs are we  
5 talking about here?

6 MR. RICHARD DOWNIN: It's a variety from your  
7 legions to your VFW's, to just private clubs of, like  
8 your Elks, Moose, that sort of thing.

9 MS. ELAINE PATRICK: And are some of these  
10 active in local civic activities?

11 MR. RICHARD DOWNIN: Oh, my --

12 MS. ELAINE PATRICK: Like the Rotary?

13 MR. RICHARD DOWNIN: No, no, we're just  
14 talking business type clubs.

15 MS. ELAINE PATRICK: Business type clubs, but  
16 they might be active in the Washington County --

17 MR. RICHARD DOWNIN: Active in the community.  
18 In the community, yes.

19 MS. ELAINE PATRICK: In Washington County  
20 Community. Thank you.

21 MS. CAROLYN WEST: Kim Lawson.

1 MS. KIM LAWSON: Hello, how are you.

2 COMMISSIONER KOELLEIN: We're fine, how are  
3 you.

4 MS. KIM LAWSON: Wonderful. I'll make this  
5 very brief, it's getting very late and I'm sure you  
6 guys are very tired.

7 MS. ELAINE PATRICK: Just warming up.

8 MS. KIM LAWSON: No, I will make it brief, I  
9 won't stay any longer than is necessary. My name is  
10 Kim Lawson, I own Fishpaw Liquors down in Anne Arundel  
11 County, I'm also actively on the board of Anne Arundel  
12 County Licensed Beverage Association. I'm here today  
13 as a business owner and I'm not a doctor, I'm not a  
14 lawyer, I'm not a researcher, I don't have studies, I  
15 don't have slides, I'm just here expressing some  
16 concerns of, of the members of our association.

17 One of the things that is most upsetting  
18 about this smoking ban is the continued government  
19 regulation that's being imposed upon our industry,  
20 other industries and private individuals. It just  
21 seems like over and over again we as business people

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1 are constantly fighting against government; we don't  
2 understand why we can't work hand in hand in trying to  
3 solve some of these problems maybe not so  
4 restrictively. We feel that many of our members,  
5 restaurants and the bars, are trying to do the best  
6 that they can to adapt to concerns of non-smokers; I  
7 myself am a non-smoker, I'll let you know that ahead of  
8 time so I'm not swayed in any way by being a smoker.

9           And the other issue is definitely an economic  
10 issue, I mean, it's a major concern for us as business  
11 owners and we've been, we've all worked very hard.  
12 Most of us work probably 60, 70, 80 hours a week  
13 actively trying to contribute to the community and be  
14 an asset. I notice a lot of the studies that were  
15 brought up were where smoking is being banned in  
16 restaurants, it seems like the concentration was on  
17 fast food restaurants. As a general rule what we find  
18 in fast food restaurants you're there maybe 15 minutes,  
19 30 minutes at the most. It's a very quick process. I  
20 don't think patrons would be too upset about not  
21 smoking for that short period of time. But in

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1 restaurants, full serve restaurant, lot of times people  
2 are there for two hours at least enjoying the meal and  
3 it's going to be difficult to tell our patrons that  
4 they can't smoke after spending \$100.00, \$200.00 on a  
5 nice meal.

6           We also feel taverns is another huge problem.  
7 It's not, again it's not an in and out process, people  
8 are there for long periods of time and, and as a  
9 general rule from what most of the people in our  
10 industry have said is a lot of their customers are  
11 smokers as well as their employees. I myself in my  
12 business, we have 12 employees and eight of them are  
13 smokers, so again it's going to be an issue of us  
14 trying to enforce government regulation instead of  
15 maybe the government enforcing their own regulations.

16           The thing that we're mainly concerned about  
17 is a lot of times government comes to us and says --  
18 well, for instance, excise taxes several years ago.  
19 They said it's not going to effect your business, you  
20 aren't going to have any repercussions from it, and in  
21 fact we as business people, we did have some

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1 repercussions and it's kind of upsetting to us as  
2 business people having people from the outside of the  
3 business environment saying that this is not going to  
4 effect business. If you aren't entrepreneurs and you  
5 aren't business people it's really difficult for us,  
6 for you to come in and say it's not going to effect  
7 your business. Our concerns are we're afraid it will  
8 affect the restaurant business and especially the  
9 tavern business. So that's why we're asking that in  
10 these establishments, restaurants and taverns, maybe  
11 we're asking that you exclude us from the smoking ban,  
12 allow it to be, smoking to be allowed in these places  
13 of business. I don't think I have any more comments,  
14 thank you for your time.

15 MS. ELAINE PATRICK: What is Fishpaw's? Is  
16 it a bar --

17 MS. KIM LAWSON: It's a package food store.

18 MS. ELAINE PATRICK: Package food store?

19 MS. KIM LAWSON: Uh-huh.

20 MS. ELAINE PATRICK: So there are customers  
21 who aren't coming there and staying to drink, they're

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1 just --

2 MS. KIM LAWSON: They're just in and out.  
3 I'm really not here speaking for my business, I don't  
4 think in terms of the package food store it's really a  
5 major issue, people are in and out. What I'm speaking  
6 for are the people who are members of our association  
7 who own restaurants and taverns especially.

8 MS. ELAINE PATRICK: And you're the Anne  
9 Arundel --

10 MS. KIM LAWSON: Anne Arundel Licensed  
11 Beverage Association.

12 MS. ELAINE PATRICK: Thank you.

13 MS. KIM LAWSON: Thank you.

14 MS. CAROLYN WEST: Tina Gray?

15 UNIDENTIFIED VOICE: She left.

16 MS. CAROLYN WEST: She left?

17 UNIDENTIFIED VOICE: She had the time for Dr.  
18 Ford, he already finished so she left.

19 MS. CAROLYN WEST: Jim Maschas? Louis  
20 Thomas?

21 MR. LOUIS THOMAS: Good afternoon.

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1 COMMISSIONER KOELLEIN: Good afternoon.

2 MR. LOUIS THOMAS: My name is Lou Thomas, I'm  
3 the owner of the Yellow House in Washington County, I'm  
4 also President of the Maryland State Licensed Beverage  
5 Association. The petitions that I've just presented  
6 are 21,000 signatures throughout the State of Maryland  
7 in a very short period of time, a matter of just a  
8 couple of weeks. These signatures represent 21 years  
9 and older customers of ours both smoking and non-  
10 smoking. These are people who say they think things  
11 should be left alone.

12 MSLBA is in opposition to this regulation for  
13 several reasons: One, it basically goes against our  
14 legislative process. In legislation a similar bill has  
15 been, goes up every year, it has been lobbied to the  
16 voters and has been defeated by (papers rustling drown  
17 out speaker) pretty well destroys the legislative  
18 process, it just seems that you can start a regulation  
19 if you don't get your way in legislation. It destroys  
20 tourism, with the Inner Harbor and Ocean City being  
21 prime tourist attractions you take away smoking you're

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1 taking away, as pointed out a while ago, at least 30  
2 percent of the business. Ocean City is close to  
3 Delaware with fine beaches also, really no reason for a  
4 smoker to go to Ocean City when they can go to Rehobeth  
5 or Delaware Beach or Virginia beaches. It will destroy  
6 jobs. People are telling us they think it may help our  
7 business, but I can't live with think and we know for a  
8 fact, talked with our customers, our customers are  
9 telling us that they won't be coming in. I live, my  
10 business is eight miles from West Virginia. There's no  
11 reason for a person to drive in 10 miles to get to me  
12 if he can go across the river in West Virginia and have  
13 his cigarette.

14           There was, it was brought up a while ago  
15 about the bans in California cities, there's an article  
16 in USA Today, I'll have to mail that to you, I don't  
17 have it with me, but in Los Angeles they put a ban in  
18 restaurants a year ago. Now after a year they found  
19 out that restaurants have lost an average of \$11,000.00  
20 a month in revenue, the City Council of LA now is  
21 considering a repeal of that regulation.

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1           It takes away the rights of the customers and  
2 also the rights of the employees. I'd like to point  
3 out 75 percent of my employees smoke so who are we  
4 protecting ourselves from? It takes away a loss of  
5 revenue from the state from sales tax and any other  
6 tax, and just seems to me, finally just seems to me  
7 that it's a regulation of lifestyle is what it comes  
8 down to. Thank you.

9           COMMISSIONER KOELLEIN: Thank you, sir.

10          MS. ELAINE PATRICK: Is your establishment a  
11 restaurant, a bar or tavern?

12          MR. LOUIS THOMAS: It's a tavern.

13          MS. ELAINE PATRICK: It's a tavern. And  
14 you're eight miles from West Virginia you say?

15          MR. LOUIS THOMAS: Yes, ma'am.

16          MS. ELAINE PATRICK: Where exactly are you  
17 located?

18          MR. LOUIS THOMAS: Boonesboro, it's on the  
19 eastern part of Washington County, it's a little town  
20 called Boonesboro.

21          MS. ELAINE PATRICK: Boonesboro?

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1 MR. LOUIS THOMAS: It's about 10 miles from  
2 Hagerstown.

3 MS. ELAINE PATRICK: Who are your customers  
4 now? People who live in the area?

5 MR. LOUIS THOMAS: Yes.

6 MS. ELAINE PATRICK: And you have a fairly  
7 large proportion of repeat customers? You have your  
8 regulars?

9 MR. LOUIS THOMAS: Right, a regular  
10 clientele. That's right.

11 MS. ELAINE PATRICK: And what about right in  
12 your immediate area, are there other places still in  
13 the Boonesboro area, pretty much in Boonesboro?

14 MR. LOUIS THOMAS: Right.

15 MS. ELAINE PATRICK: And that, is there any  
16 other tavern --

17 MR. LOUIS THOMAS: Yes, there's other taverns  
18 there, yes.

19 MS. ELAINE PATRICK: And do those, do you  
20 know, you may not know but I'm going to ask you if you  
21 do, but whether those taverns also have their own kind

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1 of repeat clientele?

2 MR. LOUIS THOMAS: I'm sure they do.

3 MS. ELAINE PATRICK: Why do people pick your  
4 establishment to come?

5 MR. LOUIS THOMAS: I'm sure the service and  
6 the atmosphere, though I'm sure that there's other  
7 places that have service and atmosphere in neighboring  
8 states.

9 MS. ELAINE PATRICK: Thank you.

10 COMMISSIONER KOELLEIN: Thank you, sir.

11 MS. CAROLYN WEST: Call on John Milani.

12 MR. JOHN MILANI: Thank you, my name is John  
13 Milani, I own Monohan's Pub in Woodlawn and I'm also  
14 the Vice President of the Baltimore County Licensed  
15 Beverage Association. We would like to go on record  
16 opposing this ban and probably our biggest concern is  
17 choice. I know we had mentioned, speakers have  
18 mentioned these smoke free restaurants and we think  
19 that's a good idea because you're giving people a  
20 choice. We think it's also a good idea to give the  
21 smokers a choice. I have probably 80 percent of my

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1 clientele works for the Social Security Administration,  
2 Health Care Finance. A, they have to go outside to  
3 smoke throughout the course of a day. When I brought  
4 this up to my customers who do smoke they said it was,  
5 once again they felt as if the only time in the day  
6 where they could sit down at a table, relax, eat lunch  
7 and smoke, this was going to be taken from them and I  
8 asked them how they would react to this ban, most of  
9 them said that they would just go and eat at the  
10 cafeteria and go outside and smoke since they couldn't  
11 come down and do it anymore. So from my standpoint we  
12 had polled the bar area one day and found that at the  
13 bar, not at the table area but at the bar 80 percent of  
14 the people at the bar smoked. Half of these people  
15 told me that they would not come into my establishment.  
16 Now when I went into business with my partner five  
17 years ago we knew there were choices that as owners we  
18 would have to make, and if we made the wrong choices we  
19 would suffer. All we're asking is for that same right  
20 now, if I decide that you cannot smoke in my  
21 establishment and people don't come in I suffer the

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1 consequences. For the government to tell people, or to  
2 tell me and my fellow licensees how we have to run our  
3 establishments, who is going to be there to help us  
4 when, when our revenues decline or in the case of  
5 California when a year down the road the state looks at  
6 the decline of revenue and says "We're sorry, we'll  
7 repeal that." Now I don't know the case as well as  
8 some of the other people but I don't think there's any  
9 restitution offered to these establishments after the  
10 state made this mistake. So what we're asking you to  
11 do is to think very carefully on this independent  
12 businessmen and let us run our businesses. If we make  
13 this decision and it doesn't work because the people  
14 who don't smoke don't want to come in at least I made  
15 the decision and I'll suffer from my decision. As far  
16 as the, as far as the incident matter, I've had  
17 customers who have said to me well if I come into your  
18 establishment and I light up a cigarette I've been  
19 dealing with you on a regular basis for almost five  
20 years, are you going to put me out? And I said I'm  
21 going to deal with exactly what the state makes me do.

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1 Not an ounce more, not an ounce less. And they said  
2 well if that's your attitude we're going to have  
3 problems. And I don't think that when the Commission,  
4 I don't think that you guys have a real good or a clear  
5 concept of what happens in a tavern or a restaurant or  
6 bar. We're not talking about a 15 or 20 minute visit,  
7 we're talking sometimes two, three hours. And for you  
8 to ask us to police this I think is very unfair. I saw  
9 some of the fines that have been mentioned, up to a  
10 \$7,000.00 fine. You know, I don't know how many of  
11 these smaller taverns can afford a \$7,000.00 fine, so  
12 if you weigh that you might be putting some people out  
13 of business, and I hope that weighs on your conscience.  
14 I don't think that's a very fair fine.

15           And in summary I think that before you were  
16 to go further we would like to see some things done  
17 legislatively where our elected officials can have some  
18 hearings, the elected officials can make some decisions  
19 based on, on the testimony that we and the opposition  
20 can provide them. I think in fairness that you owe  
21 this to everyone in the room. Thank you.

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1           COMMISSIONER KOELLEIN: Thank you. I want to  
2 thank the three previous speakers for being brief, I  
3 know we have 20 some people lined up yet to testify and  
4 when I left home this morning I told my wife I might  
5 not see her until midnight, so I'm prepared to stay as  
6 long as it takes. I just want to make an appeal to  
7 those of you who are on the list to testify if it's  
8 something that you've already given us in some of the  
9 previous hearings on the MOSH Board I'd appreciate if  
10 you tried to condense it and not repeat it. I  
11 apologize for a couple that ran a little long on us  
12 that came in with prepared presentations and I hope I  
13 can get some of you all between now and the end of the  
14 day to condense those remarks from those presentations  
15 so that everybody can get a fair chance to appeal. I  
16 note that we all, already lost Tina Gray and Jim  
17 Maschas from the Angle Inn and the Dug Out Inn and I  
18 don't want to lose any more if I can help it, so please  
19 give me your cooperation as far as possible.

20           Next speaker please.

21           MS. CAROLYN WEST: Call Steven Buckingham and

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1 Eric Gally.

2 MR. ERIC GALLY: Thank you, Commissioner,  
3 Council. I will be extremely brief and --

4 MS. ELAINE PATRICK: Which of the two are  
5 you? The court reporter needs to know if you're Steve  
6 Buckingham or --

7 MR. ERIC GALLY: No, I'm sorry, I'm Eric  
8 Gally with the American Cancer Society. I will be  
9 extremely brief and submit most of my testimony in  
10 writing. I just would like to mention a couple of  
11 points that were brought up by the last couple of  
12 speakers, most notably the argument of legislation.  
13 Well I know that you know this but I just want to point  
14 out that there was a bill submitted in the General  
15 Assembly this year specifically to overturn this  
16 regulation and forbid the Department to pass this  
17 regulation and the public outcry was so strong that the  
18 sponsor withdrew his bill after a couple days and kind  
19 of ran with his tail between his legs. So I think the  
20 elected officials have spoken on this issue and they  
21 decided on this bill obviously that this was the proper

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1 procedure, otherwise they would have passed that bill  
2 outlawing this procedure.

3 As you can probably imagine our phones have  
4 been abuzz since the Advisory Board's March 2nd  
5 recommendation that a workplace smoking ban be enacted.  
6 Dozens of workers have called to ask if what they've  
7 heard is true, business owners have called to ask when  
8 the regulation will take effect. The calls have  
9 numbered in the hundreds and all but a few have been in  
10 favor of the regulation. I thought I'd share just a  
11 couple brief anecdotes with you.

12 Some of our calls came from restaurant and  
13 bar owners in Maryland who have made their  
14 establishments smoke free. Everyone of them was  
15 annoyed at industry projections they saw in the news  
16 that said this proposed regulation would hinder  
17 business.

18 "I've been smoke free more than a year and my  
19 business couldn't be better," one bar-restaurant owner  
20 told me. "Why are people who have never tried it being  
21 put out as experts. A bar or restaurant owner who has

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1 never tried this has no business pretending he knows  
2 what's going to happen."

3           We thought you might want to hear from people  
4 like this since they have real life evidence to back up  
5 their claims that smoking bans do not hurt restaurant  
6 business. We recontacted some of the bar and  
7 restaurant owners who had contacted us initially and  
8 told them to put their thoughts in writing to you.  
9 This is when we got the notice of what was going on.  
10 And we have submitted that written testimony for the  
11 record and I won't reread that here.

12           One other call we got that's worth noting is  
13 about three weeks ago a Fortune 500 company that is  
14 looking to move some of its offices from Happaug, Long  
15 Island, the local human resources director from there  
16 called our office when he heard about the proposed ban.  
17 He said the company had planned to move to Alexandria,  
18 Virginia, but was reconsidering because they plan to  
19 institute a smoke free policy and it would be easier to  
20 move it to a state that limits smoking.

21           Now I guessed which company this was because

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1 I'm familiar with Long Island, but the human resources  
2 manager begged me not to release the company's name  
3 because employees had not been told that these plans  
4 were in effect and he did pledge to contact you with  
5 his name as soon as employees had been told.

6 As we expected dozens of employees called to  
7 say how they were medically effected by second hand  
8 smoke at work and how relieved they were to hear a ban  
9 was going into place. When was the ban going to start,  
10 how could they make sure their employer complied.  
11 These signs all point to the potential economic benefit  
12 a workplace smoking ban might have in Maryland. How  
13 many other companies will move here because they want  
14 to impose smoking bans without hassle? How many more  
15 companies will work here because they know that  
16 employees who don't smoke at work are more productive  
17 and will take fewer sick days on average than those who  
18 smoke at work. We urge you to take these points into  
19 consideration when pondering the economic impact the  
20 workplace smoking ban might have. Thank you very much.

21 COMMISSIONER KOELLEIN: Thank you, sir.

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1 MR. STEVEN BUCKINGHAM: Okay, Mr.  
2 Commissioner, my name is Steven Buckingham, I'm here  
3 today representing the Maryland Divisions or affiliates  
4 of the American Heart Association, the American Cancer  
5 Society and also the American Lung Association of  
6 Maryland, and we are in fact supportive of these  
7 regulations. These organizations are voluntary health  
8 organizations that represent the victims of disease and  
9 the health professionals that are seeking to alleviate  
10 or eliminate the causes of those diseases. The most  
11 critical part of the regulations from our perspective  
12 is the fact that the regulations will establish in law  
13 the underlying principles that the right of human  
14 beings to health is not to be subjected to unwarranted  
15 hazards, and that humans should not be subjected to a  
16 known cause of a serious debilitating or death causing  
17 disease unless there is a compelling reason to do so.  
18 The Advisory Board, MOSH Advisory Board did an  
19 excellent job in examining all of the information that  
20 was at hand and we commend them for their efforts.  
21 These regulations are clearly supported by

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1 the facts. The facts include ample documentation that  
2 tobacco smoke is a known hazard, not only for those who  
3 smoke but those who are subjected to it in the  
4 environment. The fact is also that workers are  
5 currently exposed to tobacco smoke on the job in  
6 sufficient amounts to pose a health danger, and unlike  
7 smokers who choose to risk the health effects of smoke  
8 where smoking is allowed employees have no choice  
9 whether to inhale environmental tobacco smoke. The  
10 fact is also that ETS exposure is entirely avoidable in  
11 the jobsite with the rare exceptions of tobaccoists or  
12 tobacco research organizations smoking is entirely  
13 superfluous to the work environment. And the only  
14 regulations by MOSH or OSHA that have allowed a  
15 hazardous substance to remain in the work environment  
16 are those substances that have been necessary to the  
17 industry that is concerned.

18 In short, this regulation needs to be adopted  
19 and there is no compelling reason or even a  
20 demonstrable marginal reason for subjecting workers to  
21 environmental tobacco smoke.

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1           You have heard that there are economic  
2 concerns with the impact of this on certain  
3 populations, certain business specifically bars and  
4 restaurants, and yet the testimony and evidence  
5 actually submitted to the Advisory Board and at this  
6 hearing indicates clearly that the economic  
7 consequences are either marginal or positive. There  
8 have been no witnesses who have testified that they've  
9 reversed a decision to go smoke free based on economic  
10 factors. Once a place goes smoke free it maintains  
11 that smoke free status, and certainly no one can  
12 explain to us why bar and restaurant employees are less  
13 deserving of this health protection than other  
14 employees in this state. They should be treated the  
15 same and they should be protected to the same extent as  
16 those in another industry.

17           You've also heard of smoker's rights or so-  
18 called smoker's rights, quite frankly contrary to what  
19 the Chamber of Commerce tells you smokers are not a  
20 protected class subject to regulation and defense by  
21 the Human Relations Commission. The people who are

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1 protected by that body include people of various races,  
2 ethnic groups and religions, and I certainly wouldn't  
3 put smokers on the same level as an African American, a  
4 woman, or a religious minority for protection. That is  
5 a smoke screen pure and simple.

6           There is no right to smoke that could  
7 possibly override the right of a person to breathe  
8 clean air, and even though smoking has been tolerated  
9 for generations it is not an unqualified right and must  
10 yield to the right of people to be free from toxins in  
11 their workplace air now that the hazards of ETS have  
12 been firmly established.

13           We've also heard a great deal today about  
14 overregulation of business. Well quite frankly the  
15 fact that the legislature has failed to act in this  
16 specific instance is irrelevant. They have given the  
17 Department of Licensing and Regulation the authority to  
18 protect workers from known hazards, and this body, the  
19 MOSH Advisory Board, has acted in concert with that  
20 statutory authority. In fact, if we were to leave it  
21 up to those people who cry government regulations there

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1 would not be sneeze guards over salad bars and  
2 restaurant employees would not be required to wash  
3 their hands before handling food. Just as we expect  
4 the government to protect us from bad food and  
5 unsanitary conditions the public expects to be  
6 protected from a known carcinogen; someone else's  
7 tobacco smoke.

8           Lastly, public opinion has been raised as an  
9 opposition to regulations and claimed as a reason to  
10 avoid action on this known toxic substance. Public  
11 support for a measure to protect worker or public  
12 health is not a criteria for its adoption. This agency  
13 is expressly charged with protecting workers and is  
14 required to give notice to the public of its proposed  
15 action and an opportunity for public comment and that's  
16 what we're doing here today. It is not required to  
17 obtain the approval of either the legislature or the  
18 public to do so. If that were the case we would have  
19 every safety and health regulation subjected to  
20 referendum. But even if public opinion were relevant  
21 to this decision the opinion polls have clearly

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1 indicated support among the population for smoking  
2 restrictions in enclosed places, in public places and  
3 in workplaces, and we have to recognize that the  
4 attempts by the tobacco industry to demonstrate public  
5 opposition to these regulations, we should see them for  
6 what they are, it's a cynical attempt to manipulate the  
7 process to preserve their special economic interests  
8 and not a public spirited effort.

9           As described in the May 1994 issue of  
10 Consumer Reports, a very objective publication that  
11 accepts no advertising and is very objective in it's  
12 reporting, "The tobacco industries and tobacco  
13 interests have challenged smoking restrictions in other  
14 states by setting up fronts; sham organizations, sham  
15 public interest groups." In fact this article is  
16 entitled "Public Interest Pretenders." "They use  
17 innocuous sounding names like Restaurants for Sensible  
18 Voluntary Policy and they are largely funded by the  
19 Tobacco Institute." In fact, in a side bar article  
20 you'll see an article, an analysis of the "30 percent  
21 myth." These so-called public interest groups have

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1 claimed 30 percent losses in restaurant business due to  
2 smoking bans and we heard it earlier from Mr. Thomas  
3 just a few minutes ago. However, Consumer Reports has  
4 analyzed the supporting studies and concluded that they  
5 are completely unscientific and biased. Unfortunately  
6 the media has continued to report the unsubstantiated  
7 30 percent figure because the tobacco interests and the  
8 interests of some restaurants continue to repeat this  
9 big lie hoping it will be accepted by the public and  
10 the government officials alike.

11           Lastly, I can't leave this podium I'm afraid  
12 without addressing some of the outrageous allegations  
13 of bias that we have heard from the tobacco industry  
14 representatives about this process. Now in the  
15 December 1993 hearing in Frederick the tobacco industry  
16 representative called, called that hearing biased and  
17 said that the Board had made up it's mind already.  
18 Furthermore, the same individual went before the  
19 Environmental Matters Committee of the Maryland General  
20 Assembly on March 8th and called the MOSH hearing,  
21 quote, "A sham from the outset" and indicated his

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1 belief that it was, quote, "Obvious" that the Board had  
2 received "Orders" as he called it to propose these  
3 regulations. We expect that kind of argument from  
4 individuals and organizations when the evidence is all  
5 against them. This kind of sour grapes has no place in  
6 this process and does not do a credit to the objective  
7 expert body that the MOSH Advisory Board is that was  
8 created to make independent judgments on hazards to  
9 workers' safety and health. In fact, those of us who  
10 watched the entire process saw that the Board members  
11 carefully listened to witnesses from all sides of the  
12 issue, treated each with respect and asked intelligent  
13 questions to clarify their understanding of what was  
14 presented. Furthermore, they did not rely solely on  
15 advocates for one side or another, they solicited  
16 expert testimony to address questions that they had to  
17 provide the information they needed to make an informed  
18 decision. They did ask questions about the biases of  
19 the particular witnesses before hand and I'm sure that  
20 that upset the tobacco interests because they found  
21 that those who challenged the science and disputed the

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1 scientific evidence of hazards from ETS were, all of  
2 them were beholding one way or another to tobacco  
3 industry. But this is an entirely appropriate thing  
4 for them to do in order to properly evaluate the  
5 information provided. In short, the MOSH Advisory  
6 Board performed it's function ably and well, and it's  
7 factual findings should be given great deference in  
8 your decision on these regulations.

9 Thank you, Mr. Commissioner.

10 COMMISSIONER KOELLEIN: Thank you.

11 (Tape 5)

12 MS. CAROLYN WEST: Commissioner, let me mark  
13 what Eric Galley is presenting as Exhibit number 143,  
14 and what Steve Buckingham has presented as Exhibit  
15 number 144.

16 (The documents referred to as  
17 Exhibits 143 and 144 were marked  
18 for identification and received  
19 into evidence.)

20 MS. CAROLYN WEST: I would now call on either  
21 Joe or David Duvall. Then I call on Jacqueline and

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1 George Madison?

2 MS. CAROLYN WEST: They're not here? Let me  
3 present the testimony that they apparently left. I'll  
4 mark that as Exhibit 145.

5 MS. ELAINE PATRICK: This is just testimony  
6 from --

7 MS. CAROLYN WEST: This is testimony that was  
8 submitted by Jacqueline and George Madison.

9 (The document referred to as  
10 Exhibit 145 was marked for  
11 identification and received into  
12 evidence.)

13 MS. ELAINE PATRICK: Do I have any from  
14 Duvall?

15 MS. CAROLYN WEST: No. I then call on  
16 Raymond Gui for Jane Schultz.

17 MR. RAYMOND GUI: My name is Gui.

18 MS. ELAINE PATRICK: Could you spell that for  
19 us?

20 MR. RAYMOND GUI: G U I, Gui.

21 MS. ELAINE PATRICK: G U I?

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1 MR. RAYMOND GUI: Uh-huh. Thank you, Mr.  
2 Commissioner, and Counsel, for giving me the  
3 opportunity --

4 MS. ELAINE PATRICK: Mr. Gui, pull your  
5 microphone in a little bit. Thank you.

6 MR. RAYMOND GUI: For giving me to comment on  
7 this proposed regulation. Mr. Commissioner, my company  
8 has been involved in farming and the sale of tobacco in  
9 Maryland for 45 years. I'm a native of St. Mary's  
10 County, the mother county of this state, we have grown  
11 tobacco for over 300 years. We employ real people  
12 which pay real taxes. We contribute in many different  
13 ways to the benefit of our community. We are, Mr.  
14 Chairman, Marylanders. This forum, however, is not the  
15 time or place to debate the role of tobacco farmers and  
16 warehousemen. I would like to discuss this regulation  
17 as a businessman in the state. It is difficult for me  
18 to imagine that this regulation will prevent me or stop  
19 me from being able to design an area or a tobacco  
20 warehouse for the tobacco buyers from Europe, North  
21 Carolina, and Virginia, a place to enjoy the product

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1 they have just purchased. The same holds true for my  
2 employees. I can sell a legal product in a warehouse  
3 but I am unable to smoke it if I wish so. Something  
4 doesn't make sense here and I submit that I'm not able,  
5 or unable to comprehend the situation. I think this  
6 has gone way, way too far and for whatever it's worth I  
7 submit I am not alone. I have spoken to dozens of  
8 smokers and non-smokers and they feel the same way.  
9 Please, Mr. Commissioner, rethink this. Enforcing  
10 smoking will be hard if not impossible, and what I see  
11 it making lawbreakers out of good citizens who pay  
12 taxes when they're, when there is an alternative.  
13 Thank you very much, sir.

14 MS. ELAINE PATRICK: Mr. Gui, you also  
15 operate a tobacco warehouse?

16 MR. RAYMOND GUI: Yes, ma'am.

17 MS. ELAINE PATRICK: And you made reference  
18 to the purchasers from Europe purchasing, not being  
19 able to smoke what they just purchased? In the course  
20 of operating your business do the customers need or  
21 ever smoke the tobacco product --

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1 MR. RAYMOND GUI: They smoke it right in the  
2 warehouse, ma'am.

3 MS. ELAINE PATRICK: As a part of the  
4 purchase operation?

5 MR. RAYMOND GUI: No, not as a part of the  
6 purchase operation but they all, most of them smoke  
7 anyway.

8 MS. ELAINE PATRICK: So they're pulling out  
9 their own pack of cigarettes to have a cigarette while  
10 they're going through and choosing which tobacco to  
11 buy?

12 MR. RAYMOND GUI: This is correct.

13 MS. ELAINE PATRICK: They're not testing the  
14 wares before they --

15 MR. RAYMOND GUI: Well, some of them do.  
16 They light a leaf and, and circulate the air so they  
17 can smell the aroma of what tobaccos they have bought,  
18 or are in the process of buying.

19 MS. ELAINE PATRICK: How common is that?

20 MR. RAYMOND GUI: How common is it? I'd say  
21 several of them do it, --

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1 MS. ELAINE PATRICK: Is that the --

2 MR. RAYMOND GUI: Not every day, it's not  
3 done on a daily basis, but once in a while you'll --

4 MS. ELAINE PATRICK: And how, you have one  
5 warehouse that you operate or more than one?

6 MR. RAYMOND GUI: We have three buildings but  
7 it's all known as one, one tobacco warehouse.

8 MS. ELAINE PATRICK: So there's three  
9 buildings, and how are they constructed?

10 MR. RAYMOND GUI: They're metal buildings  
11 with concrete floors.

12 MS. ELAINE PATRICK: Windows or completely  
13 enclosed?

14 MR. RAYMOND GUI: Skylights.

15 MS. ELAINE PATRICK: Skylights. What about  
16 the ventilation?

17 MR. RAYMOND GUI: We have open doors which  
18 are approximately 16' wide and they all open --

19 MS. ELAINE PATRICK: So by the time the  
20 tobacco gets to the warehouse it's already cured for  
21 smoking --

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1 MR. RAYMOND GUI: Yes, it's all cured, yes,  
2 it's all cured.

3 MS. ELAINE PATRICK: And this is, this, the  
4 people who sometimes light these leaves to smell the  
5 aroma, this is okay with you? It's a natural part of  
6 the business something you just as soon they wouldn't  
7 do anyway?

8 MR. RAYMOND GUI: Well, not everybody would  
9 do it, just the buyers would probably do it.

10 MS. ELAINE PATRICK: Well who else comes  
11 besides the buyers?

12 MR. RAYMOND GUI: All the people that own the  
13 tobacco.

14 MS. ELAINE PATRICK: Okay --

15 MR. RAYMOND GUI: It's the farmers.

16 MS. ELAINE PATRICK: The farmers are there  
17 selling and --

18 MR. RAYMOND GUI: Right, and all the help is  
19 there also.

20 MS. ELAINE PATRICK: Okay, so it's mainly the  
21 buyers then who are --

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1 MR. RAYMOND GUI: Excuse me?

2 MS. ELAINE PATRICK: It's the buyers that  
3 sometimes light the leaves and smell the aroma?

4 MR. RAYMOND GUI: Yes, ma'am.

5 MS. ELAINE PATRICK: And do you generally  
6 permit smoking in the warehouse? There's no fire issue  
7 with respect to smoking around all these tobacco  
8 leaves, these dry tobacco leaves?

9 MR. RAYMOND GUI: Well, we, we let them,  
10 buyers and people, smoke in the warehouse. Yes, ma'am.

11 MS. ELAINE PATRICK: So there's no fire issue  
12 there with their smoking?

13 MR. RAYMOND GUI: Well we have fire  
14 extinguisher stationed all throughout the building plus  
15 water hoses in case there's a problem, but we haven't  
16 ran into a problem in the 20 years I've been there.

17 MS. ELAINE PATRICK: So then the smoking is  
18 simply generally permitted?

19 MR. RAYMOND GUI: Yes, ma'am.

20 MS. ELAINE PATRICK: Okay, thank you.

21 MR. RAYMOND GUI: You're welcome.

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1 COMMISSIONER KOELLEIN: Thank you, sir.

2 MS. CAROLYN WEST: Call on Eli Howard.

3 COMMISSIONER KOELLEIN: Who is first?

4 MR. CARL BRETALL: We'll go out of turn if  
5 it's okay with the Chairman. I'm Carl Bretall, I  
6 represent Local 100, the Sheet Metal Workers'  
7 International Association and would like to thank the  
8 Chairman and the Council for the opportunity to testify  
9 on behalf of Local 100 of the Sheet Metal Workers'  
10 International Association with an office right here in  
11 Baltimore. Excuse me.

12 I come to this discussion from another  
13 perspective, from the perspective of a member of  
14 organized labor and a member of a union that works  
15 every day with the complicated mechanics of indoor air  
16 quality. Many members of the Sheet Metal Workers'  
17 International Association are called on daily to make  
18 decisions on how air flow in a room or worksite affects  
19 workers and what we as professional technicians can do  
20 to help improve an indoor environment.

21 We are not scientists or medical

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1 professionals so it is difficult for us to comment on  
2 those aspects of this proposed OSHA regulation. But  
3 we can talk with authority on the subject we know,  
4 indoor air quality. I have asked Eli Howard beside me  
5 here of the National Energy Management Institute, NEMI,  
6 to discuss the mechanics of indoor air quality with  
7 you.

8           Before I turn it over to Eli I would like to  
9 make two points: The first is that workers benefit  
10 most when they are given the opportunity to negotiate  
11 with management on any number of important social  
12 workplace issues. In the past, most policies governing  
13 smoking in the workplace have been handled through the  
14 collective bargaining process. As a union we have  
15 grave concerns about a government agency's intervention  
16 into what we believe is an important negotiable right.  
17 We believe smoking policies should be addressed in  
18 collective bargaining sessions and not through  
19 government mandates.

20           Secondly, I bring to your attention the  
21 extensive work by Federal OSHA on the issue of indoor

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1 air quality. Nearly two years ago it conducted a  
2 massive search for information on indoor air quality.  
3 It collected data from across the country and on March  
4 28th the Agency proposed a rulemaking on indoor air  
5 quality that could preempt the exact regulation that  
6 this body is considering.

7 Maryland OSHA should be commended for its  
8 work on this issue. At the same time though, I propose  
9 that you defer enactment of this regulation in order to  
10 allow time for Federal OSHA to proceed with its own  
11 proposed indoor air quality standard. The federal  
12 regulatory process for indoor air quality should be  
13 viewed as sufficient and renders separate Maryland  
14 action unnecessary. Thank you very much.

15 COMMISSIONER KOELLEIN: Thank you, sir.

16 MR. ELI HOWARD: Mr. Commissioner, Mr.  
17 Patrick, Ms. Patrick, my name is Eli Howard, I'm a  
18 mechanical engineer with the National Energy Management  
19 Institute and I would like to thank you for giving me  
20 the opportunity to address this delegation about this  
21 proposed regulation. I would also like to thank Local

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1 100 of the Sheet Metal Workers International  
2 Association for inviting me to testify on this  
3 important issue.

4           Again, I represent the National Energy  
5 Management Institute which is a national non-profit  
6 labor management trust of the sheet metal industry with  
7 offices in 11 cities across the country. Both here in  
8 Maryland and on a national basis NEMI has been actively  
9 involved in the identification of practical solutions  
10 to indoor air quality problems. During this time we  
11 investigated hundreds of buildings and conclude that  
12 the primary cause of worker indoor air quality  
13 complaints focuses on ventilation deficiencies. In  
14 most buildings that we have investigated the best  
15 solution to the complaints and/or health problems is  
16 usually not banning a single source by the proper  
17 design, installation, operation and maintenance of the  
18 ventilation system, whether smoking is permitted or  
19 banned.

20           Our conclusion has been affirmed by the  
21 findings of NIOSH, which has also found that the

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1 majority of indoor air quality complaints were caused  
2 by inadequate ventilation systems. Based on practical  
3 experience NEMI believes the workers in Maryland would  
4 be better served by a regulation that calls for a  
5 comprehensive answer to all indoor, all indoor airborne  
6 contaminants and one that relies on effective  
7 ventilation system design, installation, operations and  
8 maintenance. The proposed IAQ regulation announced by  
9 MOSH on March 28th is such a comprehensive approach.

10           Our experience has led NEMI to believe that  
11 it is possible and practical to design and install  
12 ventilation systems that effectively isolate one area  
13 from another, usually in conjunction with the  
14 guidelines of ASHRAE Standard 62-1989. The ASHRAE  
15 standard is rapidly becoming accepted nationwide and is  
16 currently the model for many indoor settings, from  
17 movie theaters to classrooms to hospital operating  
18 rooms.

19           Effective ventilation technology can be  
20 designed and operated to segregate airflows so that one  
21 specific area does not mix with another. Depending on

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1 the building design this may only involve minor  
2 modifications to the ventilation system controls and in  
3 other cases it may involve more extensive ventilation  
4 system changes.

5           An example of effective ventilation is a  
6 project that NEMI recently completed for Blue  
7 Cross/Blue Shield in Michigan. Blue Cross/Blue Shield  
8 had a smoking ban in effect but reversed it when NEMI  
9 supervised the installation of effective ventilation  
10 changes for designated smoking areas in the Blue  
11 Cross/Blue Shield headquarters building based on ASHRAE  
12 Standard 62-1989. The project, excuse me, the project  
13 allowed the workers who choose to smoke to do so in  
14 selected areas.

15           Meanwhile, the proposal before us today which  
16 calls for the ban of smoking in all places of  
17 employment raises an important concern; too often we  
18 limit our focus on one area to the detriment of the  
19 major more comprehensive solution. For example, NEMI  
20 recently worked with the American Federation of  
21 Government Employees in the Social Security

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1 Administration facility in Richmond, California, where  
2 smoking has been banned for many years. We became  
3 involved after a lethal outbreak of Legionnaire's  
4 disease in 1991 killed two people and rendered several  
5 others severely ill due to the exposure of the  
6 legionella bacteria, attributed to the poor indoor air  
7 quality and poor maintenance practices. This and other  
8 similar experiences have led us to conclude that in  
9 banning smoking alone we often ignore the larger and  
10 more insidious problem of poor indoor air quality.

11 Finally, if in fact this body decides to move  
12 forward with a proposed regulation I urge you to review  
13 the indoor air quality regulation currently being  
14 considered by OSHA. The proposed OSHA regulation not  
15 only addresses smoking concerns, but broadens the issue  
16 to include comprehensive solutions to poor indoor air  
17 quality in the workplace. The proposed regulation  
18 announced by Federal OSHA on March 28th represents a  
19 comprehensive approach to the problem of poor indoor  
20 air quality. Since the issuance of the proposed rule  
21 by Federal OSHA occurred subsequent to the

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1 consideration of this issue by the Maryland  
2 Occupational Safety and Health Advisory Board, we  
3 believe that the Department of Licensing and Regulation  
4 should defer to the Federal OSHA Process already  
5 underway.

6 I would also like to add that NEMI works with  
7 many labor unions across the country. Many in the  
8 labor community agree with the AFL-CIO resolution that  
9 suggests that these types of issues should remain  
10 within collective bargaining guidelines. Management  
11 and labor have worked successfully through this issue  
12 in the past and we have every confidence they can  
13 continue to do so in the future.

14 In closing, I would like to confirm that NEMI  
15 is looking forward to working with OSHA in, Maryland  
16 OSHA in developing legislation that will address  
17 effective ventilation strategies that result in  
18 improved indoor air quality. And be happy to answer  
19 any questions you might have at this time.

20 MS. ELAINE PATRICK: Just a couple, I hope.

21 MR. ELI HOWARD: Sure.

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1 MS. ELAINE PATRICK: I'm interested in this  
2 Blue Cross/Blue Shield project in Michigan. It says in  
3 your statement that the employees were then allowed to  
4 smoke in selected areas after ventilation changes. Can  
5 you tell me about those ventilation changes?

6 MR. ELI HOWARD: What we did is we went into  
7 the facility, it's approximately a 500,000 square foot  
8 facility, we have designated smoking areas now set up  
9 on every floor in the facility, it's a 10 story  
10 facility, and we had designated smoking areas set up  
11 where we maintain a negative pressure in those areas  
12 related to the surrounding areas, and employees are now  
13 allowed to go into those areas to smoke during their  
14 breaks and so forth --

15 MS. ELAINE PATRICK: I see.

16 MR. ELI HOWARD: -- in lieu of having to  
17 travel 10 floors outside or in lieu of not being able  
18 to smoke the entire day. Now the similar, a similar --

19 MS. ELAINE PATRICK: Is there air  
20 recirculation?

21 MR. ELI HOWARD: Pardon?

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1 MS. ELAINE PATRICK: Does the air from the  
2 smoking room --

3 MR. ELI HOWARD: It's a 100 percent outside  
4 air system. There's no air recirculated within the  
5 building, it's 100 percent outside air. We bring in  
6 100 percent outside air, we heat it, cool it, take it  
7 into the space and it's exhausted 100 percent to the  
8 outside.

9 MS. ELAINE PATRICK: And the smoking rooms  
10 are exhausted immediately to the outside --

11 MR. ELI HOWARD: That's correct.

12 MS. ELAINE PATRICK: Okay. You wanted to add  
13 something?

14 MR. ELI HOWARD: I'd just like to add that  
15 the Marriott Corporation in Bethesda, Maryland, their  
16 corporate headquarters is set up very structured in the  
17 same, in the same method there also.

18 MS. ELAINE PATRICK: With a smoking room that  
19 is exhausted directly outside --

20 MR. ELI HOWARD: That's correct.

21 MS. ELAINE PATRICK: -- and has negative

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1 pressure?

2 MR. ELI HOWARD: That's correct.

3 MS. ELAINE PATRICK: Do you have any idea,  
4 and can you tell me if you do, what this cost for Blue  
5 Cross to do this?

6 MR. ELI HOWARD: The overall mechanical  
7 system change?

8 MS. ELAINE PATRICK: Well, how big is this  
9 Blue Cross building? How many square feet?

10 MR. ELI HOWARD: It's about a half a million  
11 square foot facility. It was an extensive cost to do  
12 this but they did this in conjunction with some other,  
13 other energy operation measures to try to keep the cost  
14 down and also they were trying to improve the indoor  
15 air quality within the facility. It was an overall  
16 major ventilation system change there.

17 MS. ELAINE PATRICK: So do you know an actual  
18 dollar figure that you could attribute to the smoking  
19 rooms?

20 MR. ELI HOWARD: I could not attribute an  
21 exact dollar figure without going back and looking back

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1 in my files. We did this project, it's been two years  
2 now.

3 MS. ELAINE PATRICK: And you --

4 MR. ELI HOWARD: I'm sorry I don't have that  
5 number on the tip of my tongue for you. I could get  
6 that information for you, though, as far as a dollar  
7 number per employee or per square foot, something of  
8 that nature.

9 MS. ELAINE PATRICK: But can you break it,  
10 will you have figures that break it out by how much the  
11 smoking areas cost as opposed to the overall change?

12 MR. ELI HOWARD: Yes. We can provide you  
13 with the information on that and we did the study for  
14 the Denver Stapleton Airport, the new airport going on  
15 up there, and we can, we have got dollar numbers  
16 associated with that.

17 MS. ELAINE PATRICK: What study is that that  
18 you did --

19 MR. ELI HOWARD: Just a study we did for the  
20 Denver Stapleton Airport in Colorado on the cost of  
21 providing designated smoking areas within the airport,

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1 because that airport originally was designed as a smoke  
2 free airport.

3 MS. ELAINE PATRICK: The Stapleton Airport --

4 MR. ELI HOWARD: Not Stapleton, the new  
5 airport.

6 MS. ELAINE PATRICK: The new one?

7 MR. ELI HOWARD: Right. I'm not sure where  
8 that stands right now, we did that study for them about  
9 eight months ago to a year, but I've got the  
10 information and will show you the dollar cost for that,  
11 and I can provide it.

12 MS. ELAINE PATRICK: To revert --

13 MR. ELI HOWARD: Yes.

14 MS. ELAINE PATRICK: -- to reduct and put in  
15 the fans --

16 MR. ELI HOWARD: Right.

17 MS. ELAINE PATRICK: And the smoking areas  
18 that are being contemplated in that study would also be  
19 negative pressure, separately ventilated, exhausted  
20 directly outside?

21 MR. ELI HOWARD: That's correct. That's the

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1 way it was set up in the design. Yes.

2 MS. ELAINE PATRICK: Okay. Yeah, if you can  
3 give us some cost figures, Ms. West can give you the  
4 information --

5 MR. ELI HOWARD: I can get that information  
6 to you tomorrow with no problem.

7 MS. ELAINE PATRICK: Great.

8 MR. ELI HOWARD: Okay.

9 COMMISSIONER KOELLEIN: Thank you, Gentlemen.

10 MS. CAROLYN WEST: Commissioner, I'll enter a  
11 statement by Mr. Bretall as Exhibit number 146 and the  
12 statement of Mr. Howard as Exhibit number 147.

13 (The documents referred to as  
14 Exhibits 146 and 147 were marked  
15 for identification and received  
16 into evidence.)

17 MS. CAROLYN WEST: And I call Mr. Bruce  
18 Bereano.

19 (Many people talking at once, cannot discern  
20 individual speakers)

21 COMMISSIONER KOELLEIN: Mr. Bereano, do you

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1 yield to Mr. Pitcher?

2 (Many people talking at once, cannot discern  
3 individual speakers)

4 MR. WILLIAM PITCHER: Thank you, Commissioner  
5 and Counsel, my name is Bill Pitcher and I'm here on  
6 behalf of the Cigar Association of America opposed to  
7 these regulations. I appreciate the opportunity and  
8 the consideration of going out of turn, I have to go  
9 officiate a Little League baseball game at 5:30 in  
10 Annapolis. I have all the equipment in my trunk so if  
11 I don't make it the boys don't play.

12 MS. ELAINE PATRICK: That means you can't be  
13 late.

14 MR. WILLIAM PITCHER: Yeah. I'll rush  
15 through this as briefly as I can, but I have hung in  
16 here as long as I might because it is very important to  
17 the Cigar Association.

18 First of all I will grant that there is all  
19 the good intentions in the world here I'm sure on  
20 behalf of all the proponents of these regulations, and  
21 in, in many cases I've found the testimony by the

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1 proponents to be somewhat compelling, and again in good  
2 faith. But I would summarize these regulations in one  
3 statement if I might, and with all due respect I would  
4 say that in the position of the Cigar Association these  
5 regulations are an overbearing government regulation of  
6 lifestyle based on questionable science providing  
7 negligible benefits to the people intended to be  
8 benefitted but with severe economic negative impact to  
9 many many businesses. Why do we make that statement?  
10 First of all its our position that these regulations  
11 are unneeded; the voluntary efforts that have been in  
12 effect in many many instances across the business  
13 spectrum over the past few years have, as you even  
14 heard from the proponents, yielded significant results  
15 in accommodating the smokers and the non-smokers both  
16 in the workplace as well as in very many social  
17 settings. That voluntary effort has been done in  
18 conjunction with basic economics, collective bargaining  
19 agreements, human relations policies and common  
20 courtesy. These are already addressing the issues and  
21 will undoubtedly continue to do so. In that vein we

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1 would think that these types of regulatory settings  
2 would be unneeded.

3 Education of the populous and these market  
4 forces and common sense are, in our position, the way  
5 to be going, not government regulation of lifestyle.

6 Secondly, we would contend that these  
7 regulations are basically unenforceable. You're  
8 calling -- and this point has been made so I'll be  
9 brief, but you're calling on business people and normal  
10 citizens who are not in the enforcement of laws' arenas  
11 to begin enforcing regulations to, under the threat of  
12 severe penalties, and as Ileana can attest on behalf of  
13 some other clients of mine over the years in Annapolis  
14 dealing with Occupational Safety and Health fines I  
15 continually harp on this subject, some of these fines  
16 are to the average small businessperson absolutely  
17 devastating. They would mean bankruptcy in many cases.  
18 To force these people to enforce this sort of thing  
19 against their customers or their clients -- In my case  
20 for instance I have a small office in Annapolis with  
21 two employees, two full time employees, one part time,

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1 one smoker out of my three employees, and many clients  
2 that come in and I don't tell them yes or no, if they  
3 want to smoke there are ash trays there and they can  
4 choose to do so. We don't want to be placed in the  
5 position of having to tell our clients, the people that  
6 we make our living off of, "I've got to tell you not to  
7 do this because if you do I'm going to be subject to  
8 fines and I've got to turn you in and you're going to  
9 turn me in or my secretary is going to turn us both  
10 in." That sort of thing, it's just, it's too much.  
11 It's too much for the small businessperson to have to  
12 contend with.

13 Another point is that the legislative policy  
14 on this matter I think is fairly clear, there have been  
15 numerous instances where these issues have been debated  
16 over the last number of years within the legislative  
17 context. The legislature I will respectfully remind  
18 the Commission, is the democratic process of the  
19 citizens, the policy making body of the citizens of  
20 this state. We're talking here about an administrative  
21 penalty and regulatory scheme without the benefit of

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1 that democratic process. Yes, there have been numerous  
2 public hearings and for that you're to be commended,  
3 especially given the length of today's, but still we're  
4 talking about 188 people in Annapolis who are direct  
5 representative legislators of all the citizens of this  
6 state that have dealt with these issues on numerous  
7 occasions and have chosen not to go this far. We would  
8 urge you to, to take heed of that.

9           Lastly I'd like to just tell you that, how  
10 this would affect my client, the Cigar Association of  
11 America, in one small sphere if you will. For the last  
12 number of years cigars have begun somewhat of a minor  
13 rebound in the marketplace in a very limited area, and  
14 that's mostly in the higher end cigar products. And  
15 one of the ways that that has come about, one of the  
16 ways that people like Bill Fader of Fader's  
17 Tobacconists has been able to build his customer base  
18 and improve the image of the cigar smoker of America is  
19 through a series of dinners that the cigar smokers  
20 themselves, hosted by their distributors and the  
21 Association and other aficionados have hosted around

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1 the country. Very elegant dinners that I've had the  
2 pleasure of attending as a guest of Mr. Fader on a  
3 couple of occasions where they gather and they, they  
4 hear from members of the industry, they sit around and  
5 they have a nice dinner, cocktails, cognacs and  
6 whatever that are designed to go with the various cigar  
7 products that are being introduced. We would not be  
8 able to have those anymore under these regulations.  
9 Because someone works in these establishments where  
10 these dinners are held. And even if we had volunteers  
11 there would still be employees of those halls or  
12 restaurants or private clubs in the case of last year's  
13 dinner that would, under the terms of these regs,  
14 prohibit that sort of activity. Again, this would be  
15 of some economic negative impact to the cigar  
16 distributors of the state.

17 We urge you not to go as far as these regs  
18 do, and I'll be happy to answer any questions.

19 COMMISSIONER KOELLEIN: Thank you, sir. Play  
20 ball.

21 MR. WILLIAM PITCHER: Thank you, sir.

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1 COMMISSIONER KOELLEIN: I've heard a lot of  
2 excuses to get ahead of somebody, that's the first time  
3 I've heard that one.

4 MR. BRUCE BEREANO: Mr. Commissioner, Madam  
5 Attorney General, for the record my name is Bruce  
6 Bereano, I'm an attorney in Annapolis and I'm here on  
7 behalf of the Tobacco Institute in very strong  
8 opposition to these proposed regulations. Some of the  
9 arguments I was going to make you've heard from other  
10 individuals, I will perhaps touch upon them but not  
11 really elaborate on them, I'm just doing that as a  
12 courtesy in the question of time not a lack of  
13 seriousness or importance --

14 COMMISSIONER KOELLEIN: We understand.

15 MR. BRUCE BEREANO: -- to me as well. How  
16 did we get here in the first place? My very clear  
17 understanding, and I believe I have my facts correct,  
18 is we got here because about a year ago or maybe last  
19 summer was a very tragic and regretful accident of  
20 three workmen on a Sunday in Baltimore City  
21 refurbishing or resurfacing a gymnasium floor, someone

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1 lit up a cigar while flammable material had just been  
2 laid on that floor, there was a very tragic fire in  
3 which the three individuals were killed through the act  
4 of smoking. That was the act of negligence, that was  
5 the act of carelessness, it was something contrary to  
6 current MOSH regulations and a tragic accident  
7 occurred. As a result of that the Secretary of the  
8 Department felt that smoking in the workplace should be  
9 banned to stop and to prohibit such hazardous  
10 activities, and the one thing had absolutely nothing to  
11 do with the other, absolutely nothing to do with it  
12 whatsoever and there were regulations already in effect  
13 to prevent and to preclude that; human nature  
14 regretfully is always going to occur in a careless and  
15 a negligent fashion. But then the Secretary  
16 immediately announced an emergency regulation which was  
17 one sentence, I think it read "Every employer shall  
18 ensure that an employee does not smoke on the  
19 workplace." That emergency regulation was immediately  
20 withdrawn because of the legal processes, it couldn't  
21 have stood the time and a proposed regulation was made

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1 to the MOSH Advisory Board, the MOSH Advisory Board  
2 made its recommendations and then the Secretary,  
3 notwithstanding that, came out with this proposed  
4 regulation which is before you.

5           The sad thing to me, and I say this not  
6 easily, is that from the outset as I stood in the back  
7 room of the first hearing of the MOSH Advisory Board in  
8 Crownsville, even before the fact finding debate  
9 deliberative process commenced the Secretary advised me  
10 a regulation was going in effect; smoking in the  
11 workplace was going to go into effect in terms of  
12 banning it. And I was just so saddened that the  
13 process, the fact finding, the objectivity, the  
14 neutrality was not there whatsoever. And despite the  
15 health advocates I respectfully saw that the process of  
16 the MOSH Advisory Board was true to form to the  
17 Secretary's predictions and information. And that is  
18 that that process was not to me an open deliberative  
19 fact-finding process that was just -- there was such a  
20 double standard that was exercised between the  
21 witnesses and the scientific experts that were brought

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1 in by businesses, by industry, by the tobacco  
2 companies, and those who were not. And I truly hope  
3 with the utmost respect that at this juncture in the  
4 process that that does not continue, and I see no  
5 indication of that as I've been here all day today.  
6 Because this proposed regulation is absolutely  
7 extraordinary in its impact in the State of Maryland.

8           The Secretary says it's a health issue, it's  
9 not a business issue, it's not an economic issue. It  
10 is all three of those things and it is also a big  
11 political issue. It's an issue of looking good as an  
12 administration closes out and hands the baton over to  
13 an incoming administration. The impact of this  
14 regulation will be profound and severe on businesses  
15 and on the economy, and that is the reality and that  
16 must be looked at in a balanced reasonable approach.  
17 We have tourism here in the State of Maryland, Ocean  
18 City, Baltimore City, our wonderful communities on the  
19 eastern shore and in western Maryland. Major  
20 legislation and funding were just passed this  
21 legislative session to promote tourism and to fund it

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1 aggressively and actively. This proposed regulation is  
2 inconsistent with that; to ban smoking in bars and  
3 taverns and in recreational facilities is contrary to  
4 the fostering of tourism. Of people that are not  
5 Marylanders that come from other parts of the state and  
6 other countries of the world to visit Maryland and  
7 don't accept and follow the lifestyles that government  
8 is seeking to dictate here in the State of Maryland.  
9 They will not find Maryland to be a happy enjoyable  
10 place to visit and to spend money and to come back and  
11 to revisit. They will not understand why government is  
12 trying to run people's lives which is not being done in  
13 their communities and in their jurisdictions.

14           You've heard of the legislative action. The  
15 past four or five years the legislature has had  
16 presented to it clear and, and comprehensive proposals  
17 to ban or to regulate smoking in the private workplace.  
18 They have been resoundly rejected each and every time,  
19 which is an indication by the legislature that such  
20 governmental action as to private industry, as to  
21 private lifestyles, as to private places should not be

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1 imposed upon the public.

2           You heard from the Secretary that the  
3 Maryland Restaurant Association supports this proposal.  
4 Only in name, only the executive directors because  
5 that's convenient for them and they don't really want  
6 the hassle and they are copping out and they don't want  
7 to fight these proposals any longer. But the vast  
8 majority of the membership of the Maryland Restaurant  
9 Association does not support this proposal. I surveyed  
10 the members of the Restaurant Association in an effort  
11 to develop a coalition and found that those responding  
12 to me, 2 to 1 they were against governmental intrusion  
13 in their workplace. They did not want government in  
14 their workplace telling them how to run their  
15 restaurants and businesses. And they thought that the  
16 Board of Directors of the Maryland Restaurant  
17 Association was way out of touch with its membership,  
18 and that is very much the case. So I respectfully ask  
19 you do not take any weight or comfort in the notion  
20 that the Maryland Restaurant Association supports this  
21 proposed regulation.

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1 Under this proposed regulation if you are  
2 working in your house and you have people come into  
3 your house you cannot smoke. If you are in your home  
4 and you have a domestic or some worker coming into your  
5 house you cannot smoke in your own home. If you own a  
6 hotel or a motel in this state under this proposed  
7 regulation for several days at a convention or  
8 conference or, or maybe there's been a tragic fire in  
9 your home and you've had to vacate and live in a hotel  
10 or a motel for a brief period of time you cannot be  
11 offered, in your home away from home, in your privacy  
12 away from your primary privacy, the ability to exercise  
13 a lawful function and conduct and that is smoke in a  
14 room offered to you as a smoking room, as an option and  
15 a choice in addition to non-smoking rooms. If you are  
16 a motion picture producer or a television producer and  
17 you want to do motion productions here in the State of  
18 Maryland, you want to have actors and actresses and you  
19 want to grow and develop the motion production industry  
20 here in the State of Maryland using Maryland as a place  
21 to do Hollywood films or what have you, you can't do

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1 it. Why? Because you can't let any of your actors or  
2 actresses smoke while they're in their employment  
3 acting or on a stage or in a movie scene under the  
4 draconian rigid black and white characteristics of this  
5 proposed regulation.

6 And finally I would say that where are all  
7 the employees, where are all the workers that the  
8 health police are advocating that they're protecting  
9 and nurturing and mothering? Where are all of them  
10 today saying "Give us this regulation, give us this  
11 regulation, protect us, protect us?" There are no  
12 workers here, there are no employees here clambering  
13 for this law, clambering for this protection,  
14 clambering for this regulation. Not at all. Because  
15 they don't feel it is warranted or necessary and  
16 there's no demonstration of support for this regulation  
17 to support them in the workplace.

18 Smoking in the workplace is not a new  
19 activity. From time immemorial that there's been  
20 smoking in our society people have smoked as they have  
21 worked. Smoking has been a part and a normalcy in the

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1 workplace. It has not been in the past and does not  
2 continue to be a hazard in the workplace whatsoever.  
3 The genesis of this whole matter is absolutely  
4 irrelevant to what is before you, and this has  
5 snowballed into a political feel good look good  
6 political solution by the Department of Licensing and  
7 Regulation which has no proper authority, is a  
8 circumvention and, and an ignorance of the legislative  
9 process and the prerogatives of the legislature and  
10 respectfully the regulatory process has no political  
11 accountability to the voters and to the public at large  
12 in terms of whether they can approve or disapprove of  
13 this regulation. It would be wonderful if we could put  
14 to a resolution this proposed reg, a resolution of the  
15 people, a petition of the people, whether or not they  
16 want to ban smoking in bars, restaurants and taverns.  
17 Because I don't think they would want to.

18           And I would say in closing that the adoption  
19 of this regulation would apply for example to my law  
20 office in Annapolis, Maryland. I've a small law  
21 office, I have employees that are working there

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1 voluntarily, no one is required to work for Bruce  
2 Bereano. I have clients that come in and see me and  
3 hire me as a lawyer or hopefully hire me as a lobbyist.  
4 No one is required or forced to come into my law office  
5 and to hire me, they can go wherever they want. I own  
6 the building, I pay the mortgage, I pay the taxes, I  
7 have to meet the payroll. Why can't I run that  
8 establishment, why can't I allow my clients and my  
9 employees to smoke if they choose to do so. By the  
10 government saying "We're not going to allow that," is  
11 the government going to pay my taxes? Is the  
12 government going to pay my mortgage? Is the government  
13 going to guarantee me an income? Is the government  
14 going to guarantee me business so I can survive and  
15 economically make a livelihood? Of course the answer  
16 is no, but the government is going to intrude in the  
17 ability to have clients and to have customers that want  
18 to come into my office, that will not come into my  
19 office and hire me if they've been, they're in criminal  
20 trouble or if they're in a domestic relations  
21 predicament that they're emotionally distressed and

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1 they need and want to smoke as they're discussing this  
2 problem with their lawyer. Because of their emotional  
3 state.

4           There is a contradiction and a double  
5 standard here. No one is forced. And I just use my  
6 office as an example. There are millions of  
7 businesses. And just as government has the prerogative  
8 to say in state and county office buildings we're going  
9 to dictate the smoking policy I think private business  
10 should be left alone to exercise its own prerogative to  
11 determine smoking policy in its own establishments just  
12 like government is saying that they have the  
13 prerogative to do that in their own establishments.

14           I respectfully urge your consideration of  
15 these views, some of which I've not reiterated, that  
16 which you've heard before or really amplified on. I'd  
17 be happy to answer any questions that you may have.

18           COMMISSIONER KOELLEIN: Thank you, sir.

19           MR. BRUCE BEREANO: Thank you very much.

20           MS. CAROLYN WEST: Call on Richard Novotny.

21           MR. RICHARD NOVOTNY: Thank you. Good

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1 afternoon.

2 COMMISSIONER KOELLEIN: Good afternoon.

3 MR. RICHARD NOVOTNY: Mr. Chairman,  
4 Commissioner. I'm Richard Novotny and I', here  
5 representing the Baltimore 7-11 Franchise Owner's  
6 Association. I'm representing 87 franchised 7-11  
7 stores throughout Maryland. We are here today to  
8 strongly oppose the adoption of this proposed smoking  
9 ban.

10 These regulations are aimed at individuals  
11 smoking inside enclosed workplaces. These regulations  
12 would cause great hardship on most business  
13 establishments in Maryland. In these hard economic  
14 times when we are just coming out of one of our worst  
15 recessions why are we driving businesses to the point  
16 of extinction? In order for a business to comply with  
17 the proposed regulations of the designated smoking area  
18 thousands of dollars must be spent, and this must be  
19 spent by the proprietor; there's nobody else going to  
20 come in and do it for them. And additional valuable  
21 service and storage area would be lost due to complying

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1 with the designated smoking area for your employees if  
2 they wish to smoke.

3           It is already very difficult to operate a  
4 business in the State of Maryland due to the many  
5 regulations that are already on the books. Enforcement  
6 of these regulations with the proposed smoking ban  
7 would lie with either state or local police  
8 administration. They're already overworked and must  
9 utilize their time for more important issues than to  
10 come in and write a citation for somebody smoking. Our  
11 court systems then would be more overburdened, they're  
12 already overburdened now. Our court systems would be  
13 overburdened and add to their case load.

14           These regulations would prohibit smoking in  
15 any workplace. Not only are we talking about bars and  
16 restaurants but convenience stores, even your own  
17 private party vehicle, boats, or even your home. We  
18 strongly feel that the state is going to extremes with  
19 this regulation to control smoking and also the  
20 individual's rights. These regulations are excessive  
21 and infringe on our rights as American citizens. Our

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1 forefathers founded this country due to excess  
2 government control in England. The adoption of our  
3 constitution provides certain rights and freedoms of  
4 individuals. These rights and freedoms apply to us  
5 just as they did 200 years ago. When government tells  
6 us where we can and when we can participate in a legal  
7 activity, which is smoking, it is no longer a smoking  
8 issue but an issue of who has control of your life,  
9 government or you.

10           It is virtually impossible to be a 7-11  
11 business owner to regulate and monitor our stores since  
12 we are open 24 hours a day. Yet we have the  
13 responsibility for anybody smoking in our store if this  
14 would be enacted and could be subject to a fine of  
15 \$7,000.00 for a first offense. This is outrageous.  
16 People do crimes, I mean, crimes and don't even get  
17 fined nowhere near this kind of fine. Totally  
18 outrageous. If we got fined \$7,000.00 we'd have to go  
19 out of business because I couldn't survive. You're  
20 messing with people's lives and livelihoods with this  
21 proposal.

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1           We must purchase a license from the State of  
2 Maryland to sell tobacco products. Our customers must  
3 pay state and federal taxes when they purchase their  
4 tobacco products. Yet with these regulations my  
5 customer comes in and buys this pack of cigarettes in  
6 my store I'm able to sell it to him because it's legal,  
7 but yet if he goes to light it up and smoke a cigarette  
8 in my store I got to tell him he can't do that. Even  
9 though it's okay for me to sell him a pack of  
10 cigarettes.

11           Our employees who wish to smoke may not be  
12 able to because of these regulations. Even if we went  
13 to the expense of creating a designated smoking area in  
14 our stores how can our employees or ourselves utilize  
15 this area when you're only one employer, ourselves, on  
16 duty? A lot of stores only have one person on duty at  
17 several times throughout the day and in the evening,  
18 especially at night. I myself work the midnight shift  
19 which is from 12:00 a.m. to 8:00 a.m., and I am a  
20 smoker. What am I to do? If I have to go to the  
21 designated smoking area and light up a cigarette and

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1 smoke it I leave my store alone, unguarded, and my  
2 customers can come in and steal me blind. That's an  
3 eight hour shift that I'm not supposed to smoke in  
4 because there's nowhere for me to go. Even if I went  
5 to the expense of putting in a smoking area, it's  
6 totally, it's simply ridiculous.

7 Many store owners have offices in their own  
8 home in order to keep the necessary paperwork on a day  
9 to day basis for running our businesses. These  
10 regulations would prohibit us from smoking in our own  
11 homes because now or home becomes our workplace. The  
12 State of Maryland has gone too far with these proposed  
13 regulations. If enacted it will force many businesses  
14 to close or to relocate to another state. This would  
15 have additional losses to the Maryland economy and  
16 eventually raise our state taxes which will force even  
17 more business to relocate due to higher tax rates.

18 In our opinion this is a very backhanded and  
19 backdoor approach to a very controversial issue.  
20 Smoking in the workplace was brought before the 1994  
21 General Assembly. It was soundly defeated by our

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1 elected officials who listened to their constituents.  
2 Why are we here today? Issues that are so  
3 controversial as this should be decided by our elected  
4 officials and the general assembly and not in this  
5 forum, such as this. Issues such as this should be  
6 decided legislatively rather than regulatory process.  
7 We are sure that many businesses in the state are not  
8 even aware of these proceedings today. This issue must  
9 be brought before the 1995 General Assembly in order to  
10 have a fair hearing on smoking in the workplace.

11           We strongly urge that you propose, you would  
12 withdraw this proposed smoking ban. And one other  
13 thing I would like to add, although I am representing  
14 the Baltimore Franchise Owner's Association, I am also  
15 a charter boat captain and under this bill, being a  
16 charter boat captain, if I go inside my cabin, which  
17 happens to be my workplace I guess while I'm out on a  
18 charter and I light up a cigarette in my cabin I could  
19 be reported. Or any of my mates, or my clientele. So  
20 this has much much broad reaching effect than just bars  
21 or restaurants, because you're dealing with lives and

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1 livelihoods of people. And also it is a safety and  
2 healthy hazard but is also an economic and life hazard  
3 also. Thank you very much.

4 COMMISSIONER KOELLEIN: Thank you, sir.  
5 Thank you.

6 MS. CAROLYN WEST: Thank you. Mr. Novotny's  
7 statement has been entered into the record as Exhibit  
8 number 148.

9 (The document referred to as  
10 Exhibit 148 was marked for  
11 identification and received into  
12 evidence.)

13 MS. CAROLYN WEST: I now call on Larry  
14 Holcomb.

15 MR. LARRY HOLCOMB: Good afternoon, Mr.  
16 Commissioner, and Counsel. I am not going to submit  
17 testimony today, it's in a draft form and I will be  
18 submitting it before your deadline. I will get it here  
19 before the deadline. Six copies is it that you'd like?

20 MS. ELAINE PATRICK: Uh-huh. Ms. West knows.

21 MR. LARRY HOLCOMB: Six. My name is Larry C.

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1 Holcomb. I have a Ph.D. in the biological sciences. I  
2 am a vice president of Holcomb Environmental Services  
3 in Olivet, Michigan. I am an environmental  
4 toxicologist by background and by training and by  
5 experience. My previous experience was in research and  
6 in teaching largely to premedical students for 11  
7 years. I worked for the Michigan Department of Natural  
8 Resources for three years and then I headed up the  
9 Michigan Toxic Substance Control Commission for nearly  
10 six years looking at exposure of chemicals, whether it  
11 be in air, water, soils, evaluating the risk and  
12 proposing remedial actions when necessary.

13 I'm going to respond to your proposal, to the  
14 science behind it, to some of the comments put forth by  
15 the Board in response to some of my earlier comments.

16 The Tobacco Institute has asked me to review  
17 the proposal to restrict workplace smoking. The  
18 Maryland Board has primarily emphasized lung cancer  
19 risk and cardiovascular risks. I would like to first,  
20 foremost but with less discussion, lung cancer risk.  
21 To me the epidemiological evidence is unconvincing.

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1 I've read the EPA report, I find that the compounding  
2 involved, especially the lack of looking at dietary  
3 factors, to be most distressing as a scientist because  
4 those factors, and you had a great long discussion here  
5 this afternoon, in fact some 45 or 50 minutes about the  
6 basics of epidemiology, and the, what is meant by a low  
7 relative risk. When you find such a low relative risk  
8 it seems to be inherent that if the literature shows  
9 that there are significant dietary factors such as lung  
10 cancer risk of what, 1.05? 1.110 found by US EPA? I  
11 can show you a multitude for lung cancer relative risks  
12 from a variety of dietary factors alone, let alone  
13 other air and water factors. So you, you have, you  
14 have ignored as well as EPA has ignored and other  
15 scientists that have appeared here on your behalf to  
16 look at those dietary factors.

17           Drinking whole milk alone has a higher  
18 relative risk for lung cancer than exposure to ETS in  
19 the home. I find that the statistical manipulation of  
20 data by EPA is unprofessional to say the least. The  
21 residential relative risks are what, 1.05, 1.09 total

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1 when you combine all studies through a meta-analysis,  
2 and what is the occupational exposure? That's what  
3 you're dealing with, it's about 1.0. And dismissing  
4 them as EPA dismissed them when in fact they should be  
5 looked at carefully, I think you're making a big  
6 mistake and sooner or later it will be brought firmly,  
7 more firmly than I am to your attention.

8           Now I'd like to discuss cardiovascular risk.  
9 The Board dismisses the facts about the Surgeon General  
10 and the National Research Council reports in this  
11 regard; those reports dismissed cardiovascular risk  
12 because they said they could not find evidence to  
13 support the cardiovascular risk. EPA did the same  
14 thing. They didn't say that, but they ignored the  
15 cardiovascular risk and I think they had very good  
16 reason to dismiss them. You say, I should say the  
17 Board dismisses those facts based on claiming that  
18 there were many studies after 1986 that people like  
19 Aubry Taylor, Stan Glantz and others have reviewed, and  
20 in fact the Board claims that there is substantial risk  
21 for cardiovascular diseases. I find that the

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1 epidemiology studies in that realm on cardiovascular  
2 diseases are even weaker than are the lung cancer risk  
3 factors. And there are many more confounders for  
4 cardiovascular risk than for lung risk. Remember all  
5 those studies too were done in the home, not in an  
6 occupational setting.

7 I must and will summarize what's called a  
8 table 1 in my, in my data, and I think it's  
9 particularly interesting because I will go back to the  
10 original papers and I'm going to show you that the  
11 evidence of exposure in the papers that the Board has  
12 put in their findings are, are something like this:

13 Carbon monoxide exposure to either animals or  
14 humans in experimental studies were very high compared  
15 to ambient levels of carbon monoxide and the presence  
16 of ETS. The carbon monoxide levels vary between 30 and  
17 1,000 parts per million, whereas ambient exposures from  
18 real life, and I've earlier submitted a review of all  
19 the North American data on indoor air quality that  
20 shows that carbon monoxide levels range right around 3  
21 parts per million as an average. 3. And your earlier

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1 epidemiologist explained to you that, that the, those  
2 levels are, he said that they were low and I'm telling  
3 you that they are very very low, but he also thought  
4 that you could go linear, you could have a linear  
5 extrapolation from a higher value where experiments  
6 may have been done down to the lower ambient levels  
7 that occur. And I'm telling you I, as a toxicologist  
8 I'm telling you that isn't the way you treat non-cancer  
9 data. You might do that with cancer data, I don't do  
10 it all with cancer data because I like to look at  
11 individual compounds and look at the merits of that  
12 particular compound.

13           The Board has looked at benzoid-e-pyridine  
14 exposures specifically and I can tell you that the,  
15 that the doses that were used in the experimentation  
16 quoted by the studies that the Board looked at are  
17 thousands of times higher than the doses that are,  
18 occurred in ETS. For example, for benzoid pyridine the  
19 average levels are around 0.7 not micrograms even, 0.7  
20 nanograms per cubic meter in air. To get a dose that  
21 would be the equivalent that was given to experimental

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1 animals that you have quoted in your report it would  
2 take 30,000 years to get the same dose that you would  
3 get exposed to ETS at a restaurant setting. One of the  
4 anthracines was also used and I can tell you that the  
5 dose there too was thousands of times higher than could  
6 possibly be received by the individual.

7           The main problem I see is that the Board  
8 mistakenly, just as EPA did, mistakenly equates  
9 environmental tobacco smoke to concentrated sidestream  
10 smoke. It can't be done. They're not the same at all.  
11 The concentrations of exposure are greatly different.  
12 The Board found all, by earlier testimony about dose of  
13 exposure; however, they nor anyone else has disputed by  
14 calculated figures or exposure in the 1993 paper. The  
15 dose is very small whether it's from carbon monoxide or  
16 respiratory particulates or nicotine. And, indeed, no.  
17 ill health effects have been reported in the animals or  
18 humans at these real life exposure levels. My data  
19 also shows that ASHRAE Standard 62-89 will reduce  
20 overall exposure far more than simply banning smoking.  
21           On page 29 the Board discusses benzoid

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1 pyridine and I have in an appendix shown you, and I  
2 find it very ironic that some restaurant owners will  
3 come to you and suggest that they will ban smoking just  
4 as McDonald's restaurants have done throughout, in some  
5 parts of the country, suggesting that they're going to  
6 protect their clientele from this awful thing called  
7 ETS, when in fact one hamburger consumption provides  
8 the dose equivalent to 6 to 24 months of constant ETS  
9 exposure that would occur in a restaurant. 6 to 24  
10 months of ambient air exposure 24 hours a day to get  
11 the same dose from eating one hamburger. Now am I  
12 saying no one eat hamburgers? Absolutely not. I'm  
13 telling you that both doses are very very small but the  
14 dose from ETS is minuscule.

15           The Board on page 48 goes into risk  
16 evaluation. My 1993 paper demonstrates conclusively  
17 that respirable particulates are very low, that  
18 respirable particulates are mainly from other sources.  
19 If you do measure them you need to separate out what is  
20 from ETS and what is not. My report points out that  
21 seldom is the total RSP value above 100 micrograms per

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1 cubic meter and the World Health Organization guideline  
2 which is the only guideline that I'm aware of regarding  
3 ETS specifically, their guideline of 100 to 150  
4 micrograms per cubic meter from ETS is rarely, if ever,  
5 exceeded. Only perhaps in bars where ventilation is  
6 insufficient.

7 My data also shows that where RSP's of 100  
8 micrograms per cubic meter is exceeded it is very  
9 probable that the ASHRAE standard is not met.

10 I would recommend this in finality. I have  
11 several recommendations to the Board. First of all and  
12 most importantly stop equating concentrated sidestream  
13 smoke to environmental tobacco smoke. The data simply  
14 do not justify this. Secondly, recognize the faults of  
15 epidemiology studies and the many compounds that are  
16 involved. Thirdly, have your staff carefully  
17 reevaluate the cardiovascular literature, identify the  
18 great number of confounders and recognize the disparity  
19 in the research doses given either to animals or to  
20 people in an experimental mode and in a real life  
21 scenario. Fourthly, recognize the difference in

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1 literature between occupational and the home. Is there  
2 a difference, is there, is, is it significant and what  
3 would it tell you about your proposal to ban smoking.  
4 The dose of exposure is very low, too low to cause  
5 significant comfort or health problems, and I would add  
6 I'm a non-smoker. I don't tolerate places where I get  
7 high irritation or discomfort from environmental  
8 tobacco smoke. I'd be the first one to say that people  
9 should not be forced to deal with discomfort due to  
10 ETS, and I submit to you that most places, most times  
11 people will avoid those places if it's not properly  
12 ventilated. And lastly, meeting ASHRAE's ventilation  
13 standard would reduce exposure from all sources if in  
14 reality -- let's face facts. If you are concerned,  
15 truly concerned about the health comfort of people of  
16 the State of Maryland as I am about people anywhere  
17 then you'll look at the total issue of indoor air  
18 quality. And to do that you won't go around banning  
19 ETS, you won't go around banning copying machines, you  
20 won't go around banning people wearing perfumes or  
21 deodorants or whatever. You will focus on the meat of

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1 the issue and that is to try to get a handle on  
2 reducing exposure to all of these things combined.

3 I've submitted a paper to you, it models all,  
4 several different types of compounds found in ETS, but  
5 also coming from other sources and it shows you what  
6 ventilation will do in actually reducing all of those  
7 compounds.

8 I thank you very much for the opportunity to  
9 be here today and to give you my thoughts and I'd be  
10 glad to answer questions.

11 COMMISSIONER KOELLEIN: Thank you, sir. Any  
12 questions? Thank you, sir.

13 MS. CAROLYN WEST: Call William Lecos.

14 MR. WILLIAM LECOS: I must commend you on  
15 your patients, you've done well under this rather long  
16 day. Thank you for the opportunity to speak. My name  
17 is William Lecos and I'm Executive Vice President of  
18 the Restaurant Association of Metropolitan Washington.  
19 My association was founded in 1920 and for 73 years has  
20 represented the interests of restaurants in the greater  
21 metropolitan Washington area. Our dues paying

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1 membership includes over 140 companies operating over  
2 340 food service establishments in Maryland, primarily  
3 in Montgomery and Prince George's Counties.

4 I come before this Board today to speak in  
5 opposition to the inclusion of restaurants bars and  
6 taverns in the proposed regulations. Our position is  
7 based on simple economic reality, that such a ban will  
8 jeopardize the economic vitality of Maryland  
9 restaurants located in the metropolitan Washington  
10 area.

11 Let me state up front that the issue which  
12 brings us before you today is not in my view smoker's  
13 rights, rather it's the rights of entrepreneurs and  
14 business owners in this state to meet the needs of  
15 their customers and their employees without government  
16 mandates. We are a hospitality industry, our very  
17 survival depends on our providing customers and  
18 employees a safe and comfortable environment. When we  
19 fail to meet these basic needs we face the most serious  
20 form of censure, our customers go elsewhere and we go  
21 out of business. Or our employees choose to work for

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1 more accommodating employers and we lose our most  
2 valuable business asset, our people. It is this  
3 fundamental mechanism which governs all of our business  
4 practices, and while the restaurant industry remains an  
5 extremely difficult business in which to make a buck I  
6 know of no instance in which a restaurant failed  
7 because they offered accommodation for both non-smoking  
8 and smoking patrons, or because their employees have  
9 refused to work in such an environment.

10 I can speak of many instances where the  
11 vitality of restaurant operations has been jeopardized  
12 by legislation or regulation banning smoking; in  
13 California, Illinois, New York, local restaurant  
14 smoking bans have had a devastating effect on our  
15 industry and have cost restaurant workers jobs. The  
16 most recent issue of the National Restaurant Industry .  
17 trade magazine, Restaurant Business, and I believe  
18 that's the May issue, features an article detailing the  
19 impact of such a ban in Arlington, Texas. In this  
20 article business effected by that ban have losses of 25  
21 to 30 percent of their business while business in

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1 adjoining jurisdictions increased a proportional  
2 amount.

3           While my distinguished colleagues from the  
4 Restaurant Association of Maryland claim that a state  
5 wide ban on smoking in restaurants bars and taverns  
6 would not disadvantage Maryland businesses, such a ban  
7 would have a much more local character to it if you  
8 happened to operate a business in the Washington DC  
9 suburbs or perhaps the resorts of Ocean City. It is  
10 doubtful that patrons will drive an hour from Baltimore  
11 in search of a restaurant to accommodate a smoking  
12 dinner companion, nor will employees go that far in  
13 seeking employment in the industry, those employees  
14 will work elsewhere, those patrons will stay home.  
15 However, if you operate in Silver Spring, Rockville,  
16 Temple Hills, College Park or any other suburban  
17 location the suggestion that a state boundary alone  
18 will prevent customers from taking their business into  
19 the District of Columbia or Virginia where no such ban  
20 exists is a suggestion which defies our industry'  
21 experience and risks the livelihoods of Maryland

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1 restaurant operators.

2           Again, I state the issue is not one of smoker  
3 rights it is a question of the rights of business  
4 operators to meet the needs of their customers without  
5 governmental dictates. Maryland restaurants have a  
6 long proven record of accommodating their patrons. As  
7 the pattern of consumer behavior has changed so has our  
8 level of accommodation. Restaurants today provide far  
9 more non-smoking capacity because that is what our  
10 customers' needs have demanded. Many restaurants today  
11 are making the choice to go completely smoke free; I  
12 believe that trend will continue as more and more  
13 customers request and respond favorably to having the  
14 option of a smoke free environment available. Those  
15 choices are being exercised today by operators seeking  
16 to meet the needs of their customers and their  
17 employees, not because of any government mandate.

18           Free choice in the free market will decide  
19 this issue as customers vote with their feet as to  
20 their dining environment of preference, and employees  
21 vote with their feet as to their employment environment

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1 of preference. The function of the free market has  
2 never been improved by the injection of government  
3 fiat.

4 On the issue of government mandates what is  
5 particularly troubling about these hearing is that  
6 we're speaking to a regulatory agency deliberating the  
7 very same issues which have been examined, deliberated  
8 and adjudicated by the recently closed Maryland General  
9 Assembly session. After examining the same body of  
10 testimony as this Board the elected representatives of  
11 the citizens chose not to impose a smoking ban on  
12 Maryland restaurants. Now exercising a slightly  
13 different tack the regulatory body is seeking to  
14 unilaterally impose regulations that the legislature  
15 saw as unwise for the State. This cannot be the  
16 process of governing which best serves the people in  
17 the Free State.

18 We are a hospitality industry, we know the  
19 importance of our customers' safety and happiness. We  
20 go to great lengths to ensure that our customers leave  
21 with a good taste in their mouths and a desire to come

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1 back. As an industry we have instituted plans to  
2 ensure that our non-smoking customers eat in a  
3 comfortable environment and that our smoking customers  
4 have the right to smoke without inconveniencing others.  
5 We are also an industry that is among the most labor  
6 intensive of all enterprises; to stay in business we  
7 must be concerned for the health and safety of our  
8 employees as any other industry. As employers we must  
9 accommodate the needs of our employees in the same  
10 manner as we accommodate the wishes of our guests; the  
11 reason is simple, if we don't employees will go  
12 elsewhere for their paycheck. This is an industry  
13 which offers a tremendous degree of competition for  
14 employees. Employees exercise their options of  
15 mobility all too frequently to suit most operators. If  
16 the option of working in a smoke free environment is  
17 attractive to employees those employers offering such  
18 an environment will reap the benefit of a more stable  
19 work force with lower turnover and therefore more  
20 productivity and lower cost. These benefits are  
21 realities that operators are already aware of and that

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1 they can freely choose to provide without government  
2 mandates.

3 Providing for our customers and employees'  
4 needs is the most important requirement of our  
5 business. By accommodating both non-smoking and  
6 smoking patrons we don't risk the chance of losing our  
7 customers to neighboring jurisdictions who don't limit  
8 choice, such as the District of Columbia and Virginia.  
9 By providing a safe healthy and productive workplace we  
10 attract and keep the best employees. Mandates that put  
11 government between restaurateurs and their customers or  
12 their employees risk the livelihood and economic  
13 vitality of Maryland restaurants. We urge you to  
14 consider this and at the very least amend the proposed  
15 regulations to exclude restaurants, bars and taverns  
16 from its restrictions. Thank you.

17 MS. ELAINE PATRICK: Are you familiar with  
18 any restaurants in your particular association or bars  
19 or any establishments in your association that have  
20 prohibited smoking throughout, throughout their  
21 establishment?

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1 MR. WILLIAM LECOS: Yes, actually many  
2 restaurants I would characterize it as such.

3 MS. ELAINE PATRICK: Many have prohibited  
4 smoking generally?

5 MR. WILLIAM LECOS: Are offering a smoke free  
6 environment for all of their patrons, and they've done  
7 that, I emphasize, without government mandates  
8 requiring them to do so.

9 MS. ELAINE PATRICK: And these are in the DC  
10 metropolitan area?

11 MR. WILLIAM LECOS: Some are in Maryland,  
12 some are in Virginia, some are in the District of  
13 Columbia. They range from chain operations, fast food  
14 theaters which have been in the paper recently, Taco  
15 Bell and McDonald's both corporately going non-smoking  
16 to independent full service restaurants of long  
17 standing, Mrs. K's Toll House for example being one in  
18 Silver Spring Maryland, Carlisle Grand Cafe in  
19 Arlington Virginia, the delicatessen in my office  
20 building is a smoke free environment.

21 MS. ELAINE PATRICK: Is your office building

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1 in the District, or --

2 MR. WILLIAM LECOS: It is in McLean,  
3 Virginia.

4 MS. ELAINE PATRICK: In McLean. So there are  
5 a number of the establishments in your association that  
6 have chosen to prohibit smoking and then stayed with  
7 it?

8 MR. WILLIAM LECOS: That is correct. There  
9 are others who have attempted it and have not, not  
10 chosen to stay with it over time reacting to the  
11 demands of their customers.

12 MS. ELAINE PATRICK: Okay, thank you.

13 COMMISSIONER KOELLEIN: Thank you. Out of  
14 necessity I'm going to declare a five minute recess.  
15 When I come back we'll stay at it until we finish up.

16 (Off the record.)

17 (Back on the record.)

18 COMMISSIONER KOELLEIN: We're back on the  
19 record now ladies and gentlemen. Ms. West, if you'd  
20 call the next witness, please?

21 MS. CAROLYN WEST: I would call Doris Hughes.

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1 COMMISSIONER KOELLEIN: Doris Hughes. Did I  
2 say that correctly?

3 MS. DORIS HUGHES: Yes, sir. My name is  
4 Doris Hughes, I have been a smoker for many years. My  
5 husband and I own and operate a tavern in East  
6 Baltimore. I feel like the State of Maryland is taking  
7 my rights away as a smoker, business owner and  
8 individual person. Our income from our tavern come  
9 from people, neighbors and friends, of their choice to  
10 come and watch a baseball game, have a few drinks,  
11 socialize and smoke if they choose. All I ask is for  
12 the individual businesses and owners to have a choice  
13 if they want a non-smoking or smoking business.

14 Earlier it was stated about a restaurant that  
15 went non-smoking and their business was not affected.  
16 It goes to show at this point people have a choice, but  
17 what are statistics after the people have no choice?  
18 Where are the small businesspeople that have retired  
19 people who have been smoking for years, come enjoy a  
20 few beers, socialize in the afternoon, have a few  
21 cigarettes. Once the ban goes through we can't have

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1 that business no more. Our establishment has 15, 16  
2 barstools and we have pool leagues, shuffleboard  
3 leagues, our clientele is 40 years old and older. How  
4 can we tell these people we're no longer going to be in  
5 business, we can't let you smoke while you have a beer.  
6 I'm just asking to reconsider as far as making it a ban  
7 and give us our choice. Thank you.

8 COMMISSIONER KOELLEIN: Thank you.

9 MS. CAROLYN WEST: Michael Hughes?

10 UNIDENTIFIED SPEAKER (Too far away from  
11 microphone to hear.)

12 MS. CAROLYN WEST: I'm going to kill the last  
13 name here, Steven Cotsoradis.

14 MR. STEVEN COTSORADIS: My name is Steven K.  
15 Cotsoradis, I own the Garden Bar and I'm also the  
16 President of East Baltimore Licensed Beverage  
17 Association. I'm going to put it on record that our  
18 association is against this regulation. It would hurt  
19 us financially.

20 This, our taverns which you would call, a  
21 friend of mine once mentioned, they're the local

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1 country clubs of the poor people. The locals come in  
2 there, it's like their little country club. They come  
3 in there to socialize after work, have a few beverages  
4 and smoke. My bar, at least 90 percent of the people  
5 smoke. I have in there an exhaust fan, I've got two  
6 smoke-eaters, and most of our tavern members, they all  
7 have some type of an exhaust. We're all working at it.  
8 We're working people and we put in anywhere from 12 to  
9 14 hours a day in our tavern, so we're not going to  
10 have a tavern air atmosphere of any danger that we can  
11 prevent for our employees, we're there working in the  
12 same atmosphere so we're going to look after it. And  
13 they, he said something about, a gentleman, a room 20  
14 by 28, they've had ventilation and they tested it. Do  
15 they actually, would they go into a real tavern where  
16 we have smoke-eaters, we have large exhaust systems and  
17 test the air there? They're testing it in a closed  
18 environment which I don't know what ventilation they're  
19 using, they said it was according to code. Well, if I  
20 can remember back far enough, code, I don't remember  
21 any ventilation provision in the code for me when I had

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1 my bar built.

2           And another little thing, why do we have to  
3 police it? When they, if somebody smokes in the  
4 stadium or someplace else who gets the fine? The  
5 person that done the smoking? In our business now, if  
6 somebody come in my place and lit up a cigarette,  
7 somebody happened to catch him I get fined which I  
8 don't think is very fair. And like other members, we  
9 want to be able to be the ones that decide if we want a  
10 smoking bar or if we want a non-smoking bar. You can  
11 put a sign outside that this is a smoking tavern, it's  
12 hazardous to your health, if you want to come in you're  
13 welcome. All my employee, all of them but one, that's  
14 my son, he doesn't smoke. My son doesn't smoke, all  
15 the rest of them smoke in my bar. I don't smoke either  
16 but that's their privilege. I wouldn't, they would  
17 have to go outside and smoke. It would be very,  
18 hardships on us with this new regulation that you're  
19 putting in. Thank you.

20           COMMISSIONER KOELLEIN: Thank you, sir.

21           MR. STEVEN COTSORADIS: Any questions? No?

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1 MS. CAROLYN WEST: Steven Sklar.

2 MR. STEVEN SKLAR: I'm Steve Sklar,  
3 representing today the Public Affairs Committee of the  
4 Maryland Heart Association's Maryland Chapter, and also  
5 a former member of the Maryland General Assembly.

6 Commissioner Koellein and Ms. Patrick, the  
7 procedure with the, today's regulations has been  
8 characterized by its opponents as a political issue,  
9 one that looks good at the end of an administration  
10 that's about to end its 4 years. A look good feel good  
11 measure. I would recharacterize this whole process not  
12 as political expediency but an exercise in political  
13 guts. This isn't something that either the  
14 Commissioner or the Secretary or the Governor is doing  
15 to make points, they're doing something that's  
16 protecting people and protecting employees  
17 specifically.

18 At least seven witnesses have come to you  
19 today that the proposed regulation and particularly the  
20 issue of bars and restaurants is a matter for the  
21 legislature, and that in effect the Division is

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1 preempting the legislature who has already spoken in  
2 numerous years, particularly this year, by not passing  
3 legislation that it attempts to do in statute what the  
4 regulation attempts to do in its own procedure. I  
5 would disagree with that characterization as well for a  
6 number of reasons:

7           First, when this regulation was proposed  
8 there had already been prefab bills to accomplish no  
9 smoking in public accommodations and in the workplace.  
10 So the regulation came out with a prefab. Those of us  
11 who testified as proponents of the legislation asked  
12 the committee to report it unfavorable, unfavorable in  
13 view of the subsequent development that was the  
14 issuance of this regulation which in our opinion was  
15 much more comprehensive than its coverage and much  
16 better substantiated by a record that could be  
17 successful in any subsequent challenge in the courts.  
18 Now the legislature in three or four hours of hearing  
19 at a committee level was not able to build this  
20 impressive record that you have here with scores and  
21 scores of expert witnesses, files of exhibits, boxes of

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1 records that have been submitted as part of the record  
2 that could very easily withstand any legal challenge as  
3 to the substantial nature of the evidence presented for  
4 this regulation, and that's why I as one of the  
5 witnesses and as proponents did submit to the  
6 legislature to defeat that bill in deference to yours.  
7 Others have too and we'd be glad to submit written  
8 statements that were part of the legislative record to  
9 you to show that position.

10 We also know that the MOSH Advisory Board as  
11 well as the Commissioner are statutorily delegated this  
12 responsibility by the legislature to determine  
13 conditions in the workplace that are detrimental to  
14 health and impaired function, and to protect employees.  
15 The legislature in fact delegated this authority to you  
16 to make these determinations and you did it and you did  
17 it splendidly. There was a bill, submit bill 856 that  
18 was introduced after the defeat of the public  
19 accommodations and workplace legislation that would  
20 have restricted your department, your agency from  
21 issuing this regulation in specific smoking areas.

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1 That was defeated in the senate so the last expression  
2 of the legislature in the last session was to uphold  
3 the process that you are now engaged in, and that is  
4 the regulatory approach to smoking in the workplace.

5 Let me make a comment on suggested additions  
6 to your regulation in language. The first is the  
7 omission of the temporary but very important health  
8 implications of smoking to the employee short of  
9 mortality. The record of the Advisory Board is replete  
10 with witnesses, at least five employees and Dr.  
11 Bascomb, which are applied by the Board to show the  
12 temporary but significant material impacts on health  
13 and work function. Those include sinus conditions,  
14 headaches, bronchial constriction which I can complain  
15 of, aggravated heart conditions, those who are enduring  
16 cancer treatment and radiation, respiratory effects,  
17 tearing, blepharitis, all these kinds of ailments that  
18 are occasionally caused by smoking in the workplace  
19 short of mortality 20 to 30 years later. These have a  
20 very definite impact on health in the immediate sense  
21 and also particularly on work function which is part of

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1 the responsibility under statute for this Agency to  
2 determine. So I would suggest this language in the  
3 statement of purpose: "Compelling evidence establishes  
4 ETS as a cause of acute and material impairment of  
5 health and functional capacity." I think the record  
6 supports that as the Advisory Board and particularly  
7 the witnesses today, the employees who talked of their  
8 inability to perform, their unwillingness to leave  
9 their job but their having to leave their job because  
10 of these conditions, et cetera, so that should be part  
11 of the findings in the statement of purpose.

12 I would also suggest in the last paragraph,  
13 the regulation, under the provision that talks about  
14 the "Chapter may not be construed to," I would add a  
15 new C, "Prohibit or impede an employee recourse to any  
16 assisting legal remedies." I think that's important  
17 that should there be an exemption along the way either  
18 by this Agency or the courts, that it may not be used  
19 by a defendant employer to obviate any liability in  
20 Workman's Compensation or willful injury complaints by  
21 employees. So that language ought to be there so

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1 there'd be no unfair interference.

2 I think that most of us are very thankful in  
3 the health community and in the general public for what  
4 you've done for employees, from eliminating harmful and  
5 dangerous environments, from altercations and tension  
6 among fellow employees, from unnecessary confrontations  
7 with their employers, and from the horrible and mean  
8 dilemma of having to choose between one's health and  
9 one's job. Also, for people seeking employment if they  
10 are health prudent and follow the medical warnings from  
11 the authorities that you have heard from and from  
12 others they cannot effectively apply for a job in a  
13 facility that elects, by choice, to have smoking in  
14 that facility. It's constructive discrimination of  
15 employment opportunities, that employer becomes,  
16 effectively, a non-equal opportunity employer, Mr.  
17 Commissioner.

18 COMMISSIONER KOELLEIN: Uh-huh.

19 MR. STEVEN SKLAR: We wish you luck, we wish  
20 you success, and you know you have many friends in  
21 Maryland to help you in this effort.

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1 COMMISSIONER KOELLEIN: Thank you, sir.

2 Questions? Thank you.

3 MS. CAROLYN WEST: Susan West?

4 UNIDENTIFIED SPEAKER: Gone.

5 MS. CAROLYN WEST: Gone. Charles Secola?

6 UNIDENTIFIED SPEAKER: Gone.

7 MS. CAROLYN WEST: Angus Everton. I know  
8 he's here.

9 MR. ANGUS EVERTON: Here. Thank you, Mr.  
10 Commissioner and Counsel. I'm Angus Everton, I am here  
11 on behalf of the Medical and Chiurgical Faculty of  
12 Maryland, which is the State Medical Society, the  
13 professional society of the physicians in this state.  
14 We have approximately 7,000, 6 to 7,000 members all of  
15 whom are physicians licensed to practice medicine here.

16 I am here as a general counsel to MEDCHI,  
17 which I'm their lawyer. I'm also a private attorney, I  
18 am in private practice as a trial lawyer and that will  
19 be significant in some of what I tell you in my  
20 testimony. I will try to stick with things that have  
21 not been said too many times today already and I think

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1 I can do that pretty easily on some of the scientific  
2 point. I do want to reiterate, however, MEDCHI in  
3 September of last year took the position at it's  
4 semiannual meeting to support any legislation or  
5 regulatory activity that would impose prohibition on  
6 smoking in enclosed indoor public places. MEDCHI  
7 strongly supports your efforts on behalf of the  
8 employees in this state to promulgate these MOSH  
9 regulations. All of the physicians, the physicians of  
10 Maryland see this purely and simply as an issue of  
11 public health.

12 As a regulatory agency that was created for  
13 the overwhelming purpose of protecting the public  
14 health of our State's employees this sort of regulation  
15 is precisely the thing from a legal perspective that  
16 the general assembly empowered you to do. It is simply  
17 erroneous for anyone to come up here, anyone who  
18 purports to be a lawyer to come up here and say that  
19 what you are doing is contrary to the mandate of the  
20 General Assembly. Mr. Sklar said it quite well, the  
21 General Assembly had three opportunities this session

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1 to stop what you were doing, twice through the  
2 indirection or preemption and once through a bill that  
3 would have directly prohibited. And in all  
4 circumstances those bills were defeated and in at least  
5 two of those circumstances I'm personally aware that  
6 tobacco interests were behind the bills that were  
7 defeated. The last bill technically was not defeated,  
8 it was withdrawn by Senator Bromwell, it was withdrawn  
9 with the axe coming down right behind it; it would have  
10 been defeated if it had not been withdrawn. And it was  
11 defeated for good tactical reasons but let us not make  
12 any mistakes; that bill was a dead duck.

13 I've heard something today that has been a  
14 constant theme throughout a lot of the testimony and  
15 that is you ought to allow the majority of our  
16 employees who want to smoke on the job the right to  
17 smoke. I have some real question about the anecdotal  
18 evidence of whether these, there is a majority who  
19 actually wants to smoke or does smoke, but if that be  
20 so that is all the more reason why you should act in  
21 the way you are acting, because you're, it is incumbent

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1 upon you to protect the health, the welfare and the  
2 life of that minority who doesn't want to smoke, who  
3 does not want to be exposed to environmental tobacco  
4 smoke but yet who because of their minority position  
5 are afraid to lose their jobs by standing up and saying  
6 "Don't smoke here, you're making me sick." Who can't  
7 protect themselves in that regard without leaving work.  
8 Without going out and looking for another job. And  
9 it's one thing to say "Well, these people don't have to  
10 work here," surely they don't, but say that to a single  
11 mother who can't get a job anywhere else but the job  
12 that she works at at night in a bar.

13           The fact that this is not a democratic  
14 exercise, this is an exercise in the protection in the  
15 exercise of the public health and you're doing that  
16 thing and that is appropriate as I believe I've  
17 testified, it is precisely what you are empowered to  
18 do. Thank you for doing it. Please do so. If  
19 democracy were important, however, as a matter of  
20 serendipity I got ahold of a New York Times/CBS poll  
21 that came out on Compuserve last Sunday, two days ago,

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1 in which they polled 1215 adults and they said a lot of  
2 things, many of which were very unfavorable to the  
3 tobacco companies but since we're not engaging in  
4 anything ad hominem here I won't get into it, but one  
5 of the things that came out was that 67 percent favor a  
6 complete ban on smoking in all public places. It seems  
7 to me, and I won't go into this long, but something  
8 that has not been said also today is that tobacco does  
9 occupy a unique position in the history of the United  
10 States and particularly in the history of Maryland, it  
11 was a very respectable thing to be a grower and seller  
12 of tobacco for many generations; centuries in this  
13 state. It still has a tail effect of respectability if  
14 you will, but this is a situation where in the last 30  
15 years -- I became addicted to tobacco myself when I was  
16 11 prior to this 30 year event -- in the last 30 years  
17 it has become recognized that tobacco is a deadly  
18 poison. Not merely a carcinogen but an agent for heart  
19 disease. That it creates birth defects. Many things,  
20 many many evil health effects are attributed to tobacco  
21 that simply weren't attributed to it 20 years ago, 30

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1 years ago. By definition our social attitude, our  
2 regulatory and our legal attitude toward this product  
3 have got to change, and the protection of the public  
4 from the effects of tobacco smoke is paramount. It's  
5 paramount. It's more important than convenience, it's  
6 more important than economics, it is paramount.

7 My law office banned smoking three years ago.  
8 That's how I'm getting into my business as a trial  
9 lawyer. We banned it in the office three years ago,  
10 either by clients or by people in there. I raised  
11 hell. I was the only person to do so. I don't smoke  
12 now, I quit 20 years ago by the way, it was very  
13 difficult to do. Quit smoking cigarettes that is,  
14 still smoked a pipe for a while after that. Gave that  
15 up because of the ban. I said this is a very unfair  
16 thing to do to the staff here, we're under a lot of  
17 stress here, these people enjoy their cigarettes, it's  
18 one of the few things that they can do as a matter of  
19 pure pleasure and they ought to be able to do it and  
20 still work at the same time. My partners told me  
21 basically to go -- you know, that I was all wet and

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1 that we were going to have this ban and if I didn't  
2 like it that was just too bad. We have had the ban and  
3 I have to say I was dead wrong. The, the staff and the  
4 attorneys there have not had a problem complying with  
5 the non-smoking ban. We had one client that I'm aware  
6 of in the three years since then who became outraged  
7 because he couldn't smoke. He was allowed to on one  
8 occasion and the office, all of the office raised so  
9 much hell about it that when he returned for another  
10 client interview we wouldn't let him do it again. We  
11 have let no one smoke there since then. Economically  
12 has it done -- I heard Bill Pitcher sit right here and  
13 say that it might drive him into bankruptcy if he had  
14 to stop smoking in his office. Well we went from 12  
15 lawyers to 25 over that period. I won't, certainly not  
16 attributable to the fact that we don't smoke in that  
17 office but it sure hasn't hurt us any. I don't believe  
18 that any, that any adverse economic evidence has come  
19 before you today, I don't think I heard one shred of  
20 evidence. I have heard people say "I'm concerned that  
21 people will go out of state if I close down the smoking

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1 operations in my tavern, my bar, my restaurant or what  
2 have you," but I've heard Secretary Fogle I believe,  
3 the first person to testify say has anybody addressed  
4 the issue about those people who would be coming in the  
5 state to get to a smoke free environment? And the  
6 answer is no, and the people who have tried this and  
7 who have not stopped as far as we, even from those who  
8 are opposed to this bill say it doesn't seem to have  
9 made any difference.

10 Keep up what you're doing and thank you very  
11 much.

12 COMMISSIONER KOELLEIN: Thank you, sir.

13 MR. ANGUS EVERTON: If you have any questions  
14 I'll answer them.

15 COMMISSIONER KOELLEIN: Thank you.

16 MS. CAROLYN WEST: Martin Poole. Cindy  
17 Berkley? Valerie Hungerford? And Howard Burger?  
18 That's all that has signed in, Commissioner.

19 UNIDENTIFIED VOICE: You had one more that  
20 signed in.

21 MS. CAROLYN WEST: Who was that?

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1 UNIDENTIFIED VOICE: William Wright.

2 MS. CAROLYN WEST: Is that you?

3 MR. WILLIAM WRIGHT: Yes, it is.

4 MS. CAROLYN WEST: Would you like to speak?

5 MR. WILLIAM WRIGHT: Yes.

6 MS. CAROLYN WEST: Please come forward. Sir,  
7 could you state your name and spell it? I didn't get  
8 it.

9 COMMISSIONER KOELLEIN: Excuse me, is this  
10 the one we were looking for, Carolyn?

11 MS. CAROLYN WEST: Excuse me?

12 COMMISSIONER KOELLEIN: Is this the one we  
13 were looking for? Is he the final one that --

14 MS. CAROLYN WEST: No, apparently there's  
15 another gentlemen.

16 COMMISSIONER KOELLEIN: Okay, he's next to  
17 last then. Okay.

18 MR. WILLIAM WRIGHT: Mr. Commissioner,  
19 Counsel, Counsel. My name is William Wright, I'm an  
20 attorney in private practice in Ellicott City,  
21 Maryland. I live in Catonsville. I've been trying for

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1 over 20 years to get the protection that your  
2 regulations are proposing. I've testified many times  
3 at the county and state levels to have the protection,  
4 it hasn't been provided. There is no other product,  
5 there is no other industry like tobacco and the tobacco  
6 industry.

7           During the Viet Nam war 65,000 deaths are  
8 reported and I believe approximately 400,000 injuries.  
9 This is over a 10 year period. In this country alone  
10 in one year 430,000 people more or less are killed by  
11 tobacco related illnesses. Millions more are maimed or  
12 in other ways incapacitated.

13           As I recall the initial regulations that were  
14 promoted by one of the articles or at least one of the  
15 studies in Maryland that Maryland is either first or  
16 second in cancer deaths I was very proud that Mr. Fogle  
17 introduced the proposed regulations to provide  
18 employees of Maryland smoke free areas. They're  
19 important, they're needed.

20           Mr. Bereano said that the explosion that  
21 killed three workers really should not be considered as

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1 part of your considerations, but what if none of those  
2 people smoked, they would be alive today.

3           The prior administrations of this state have  
4 ignored the health data and the pleas of the public for  
5 many many years. This is the first time our governor  
6 and our administration have stood up and been counted  
7 and are doing what is necessary. The Agency has a  
8 directive, that is to provide safe and healthful work  
9 environments for all employees; not some, not just a  
10 few, but all. This is not a voting issue. If one  
11 person is hurt that person needs to be protected. To  
12 exclude tobacco smoke coverage from your regulations I  
13 feel means that many regulations that are imposed upon  
14 business shouldn't be there because it imposes the  
15 burden upon them. I often think about why we require  
16 them to use stainless steel cooking pots rather than  
17 aluminum; aluminum they say, cooking pots, cause  
18 Alzheimer's. How many of us would still be eating out  
19 of aluminum pots and pans rather than stainless steel.

20           I'm often reminded when I attend these  
21 sessions that probably around the turn of the century

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1 when spittoons were taken out of public places, I could  
2 just hear Mr. Bereano and those that support him  
3 complain about spittoons. I feel if someone wanted to  
4 spit as long as it's not in my direction it would be  
5 okay, but unfortunately when someone smokes I  
6 participate in that smoking. I can remember early on  
7 when I testified with the State Legislature that many  
8 of the representatives and some of the people who were  
9 opponents would smoke in the room and they would mock  
10 and laugh at us. I can assure you today that if we  
11 were back 20 years and you were starting out today it  
12 would probably happen. It is so nice to be able to  
13 come here and not have to breathe and endure the smoke  
14 that we had to endure then and suffer the headaches  
15 that many of us had.

16           The current regulations I believe are real  
17 good, there is one part though or several parts that I  
18 think should be corrected, one of which deals with the  
19 door that would be part of the wall enclosure of the  
20 smoking area. I think the regulation should be changed  
21 that it should remain closed and open only when people

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1 go in and go out of the smoking area. I also share the  
2 concern that tobacco smoke in that room would leach out  
3 into the non-smoking area either through the  
4 ventilation system or because the ventilation would not  
5 be, the positive air, the good air would not be drawn  
6 into the room.

7 I brought today a letter that I keep bringing  
8 it out but I never hear about it from anybody else. I  
9 received a letter dated March 8th, 1976, from the  
10 Phillip Morris Company, and I'll make a copy and add a  
11 copy today. I had written to them asking for the  
12 number of chemicals that were in tobacco smoke because  
13 during that time there were full page ads for American  
14 cigarettes saying that there were 2,000 ingredients in  
15 tobacco smoke. The letter I got back said that there  
16 were over 6,000 compounds that have already been  
17 detected in tobacco smoke. In 1978 I spoke with a  
18 research scientist of the Department of Agriculture,  
19 unfortunately I did not document this, but as I recall  
20 it he said there was not 6,000 there was over 36,000  
21 individual components of tobacco smoke. In this

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1 letter from Phillip Morris they refer me to a report  
2 from the Department of Agriculture that refers to the  
3 composition of tobacco smoke, and I'm provide a list  
4 here if you want it for your scientists or whatever you  
5 have in the Department, they can better explain the  
6 chemicals to you than I can, but on this page which is  
7 table III there are two columns of cancerous causing  
8 chemicals, and what is -- it's bad enough to have this  
9 list which I think I counted 98. The synergistic  
10 effects of these chemicals, the other chemicals that  
11 are on the list, the chemicals that are in our air and  
12 are in our food I believe are part of the problems  
13 causing so much cancer in Maryland. We are in an acid  
14 state, acid air state. We think that we go out of a  
15 smoking area at the end of the day into fresh air but  
16 we really don't, we go into an acid air area and the  
17 acid air causes further harm to our lungs because of  
18 the smoke that's in the air in the workday.

19 I have another table here that came from the  
20 National Cancer Institute that lists more carcinogenic  
21 and cocarcinogenic substances which I'll make available

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1 today.

2 Also linked again to my experience with the  
3 Health Care Financing Administration and SSA Agencies  
4 at Woodlawn, when I started there back in 1973 I was  
5 required to work in a one story building that was  
6 normally, it was built I understand for about a dozen  
7 people. We had 150 people assigned to that building.  
8 The smoke was so strong you could see it, it was in  
9 layers, it would just hover in the air. So many  
10 complained about it that they brought people up from  
11 the HEW in Washington to get an air sample that day,  
12 and I can remember, it was like a windstorm in that  
13 building, it was so fresh and the air was coming  
14 around, they determined there was no problem and the  
15 next day we were back to normal with the low  
16 ventilation and a lot of smoke in the area.

17 You've heard today that businesses are  
18 claiming they have a right to determine what is right  
19 for the public. If they had been doing in the past  
20 what would be right for the public probably at least  
21 half of the Maryland code would not be in existence

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1 today. The reason it is there is that people don't do  
2 what they should do on behalf of the public, and I  
3 think your regulation probably would go two pages,  
4 maybe three pages of the Maryland Code, and would  
5 hardly increase the volume of the Code and that's why,  
6 another reason why it is needed; it is not a burden on  
7 them, a few signs on the doors would do it. If you go  
8 into Columbia Mall now there's still one or two people  
9 out there smoking but the vast majority know when they  
10 go into the mall there's no smoking and they do obey.

11 One of the things I do as part of my reward  
12 for providing places that provide me with a no smoking  
13 area involves the Columbia Mall. It wasn't a lot of  
14 money but I was going to buy clothes, I had \$600.00 I  
15 wanted to spend. I live in Catonsville, I could have  
16 gone to Security Mall, I could have gone to Westview,  
17 but I drove all the way to Columbia so that I could  
18 spend my money there and reward those businesspeople  
19 for providing a smoke free area.

20 I would also like to share my experience with  
21 Wendy's out on Route 40 in Ellicott City. I think it's

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1 roughly a 40 foot square building. They had, and I  
2 haven't been there in five years, I don't know if it's  
3 changed, but at that time they had one table about 2'  
4 square, above that was a post card size sign that said  
5 no smoking. I don't go there. I go into Roy Rogers  
6 because I had heard they prohibit smoking, they had the  
7 no smoking section in the middle of two smoking  
8 sections. When you walk in the doors while you're  
9 waiting for your food that's where the smoking is  
10 permitted. The Inner Harbor, the buildings stand  
11 around the waterway are supposed to or already have  
12 prohibited smoking within those buildings. If they've  
13 done it I'm sure they've already investigated its  
14 effect on tourism, and I'm sure that probably the  
15 people that have gone in there and complained about the  
16 tourists and that's why they've done it.

17           You'll notice today a lot of clapping from  
18 those that oppose your regulations by their speakers.  
19 I often, as they were doing it I was wondering if when  
20 those people, their friends get cancer or emphysema and  
21 they go to the hospital or wherever they go to visit

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1    them are they going to clap then? I doubt it.

2               I had an experience with my barber, he has a  
3 built room that's maybe about 20 feet wide and 40 feet  
4 long, he's in there by himself, he has three or four  
5 chairs but he's the only one there. One day one of the  
6 people that was sitting there waiting smelt gas towards  
7 the back of the room, they called Gas and Electric,  
8 there were children in there besides myself. A smoker  
9 came in, walked to the back of the room and continued  
10 to smoke, but yet the barber said nothing to him even  
11 though they had smelt smoke and called the Gas and  
12 Electric people to come out. He wants this  
13 regulation, this type of regulation. I've talked to  
14 him many times. The reason he can't do it is that he  
15 doesn't want to offend those that smoke, that they  
16 would go elsewhere to have their hair cut and he can't  
17 afford to do that. But if it was done by governmental  
18 agency he's definitely in favor of it.

19              I don't mean this to be mean or nasty but  
20 it's an honest feeling on my part. When I hear the  
21 opponents to the regulations such as this over the

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1 years and again today I am reminded of what occurred  
2 during the Nuremberg Trials I see on TV from time to  
3 time. These people didn't do anything wrong, they were  
4 just obeying their military rulers. I'm also reminded  
5 now that there are people who say the Holocaust never  
6 happened. This is what I'm reminded of when I hear  
7 these people speak, they say there's no harm but yet if  
8 you go to the hospitals and you go to nursing homes you  
9 see the effects of smoking.

10           The restaurant people are opposing these  
11 regulations, the reason is it's profit. They get more  
12 profit from people not smoking there but drinking. I  
13 spoke to the woman, oh, I guess 15 years ago now who  
14 represented the Restaurant Association and what I told  
15 her was I didn't understand why they're opposing it  
16 because if people don't smoke they're in and out more  
17 quickly. She said smokers sit and drink and there's  
18 more profit in alcohol than in food. That's the issue,  
19 acknowledged.

20           I heard the other day on radio that Mr.  
21 Sabitini said that the medical cost for treating

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1 smoking related illnesses in this state alone are over  
2 500 million dollars. Now if there's something you can  
3 do to help the majority of smokers who want to quit so  
4 that our medical costs for the state and our insurance  
5 companies go down I think you should do that.

6 COMMISSIONER KOELLEIN: Mr. Wright, I'm going  
7 to try to summarize a little bit. I'm kind of getting  
8 anxious to get to that gentleman over there.

9 MR. WILLIAM WRIGHT: I have one and a half  
10 pages, sir. If you should need to consider reading  
11 these regulations I would suggest that you first visit  
12 the cancer and emphysema wards of our local hospitals  
13 and nursing homes. As I said to you outside today I  
14 remember you a long time ago being with the Union and I  
15 know that you have employee concerns on top of your  
16 environment. How many people have you known over the  
17 years who were smokers that have died because of  
18 smoking tobacco products? If this regulation had been  
19 put in place 20 years ago, 25 years ago many of your  
20 friends would probably have quit smoking and probably  
21 be alive today.

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1 I want to thank you for presenting this  
2 opportunity for us, I know you've been through a lot,  
3 you've probably heard many of this stuff before, but  
4 we're here trying to support you in what you're trying  
5 to do and show the State government, the Governor and  
6 the Secretary that there are people here who support  
7 what you're doing, like what you do and there's a whole  
8 bunch of people behind us, our friends that need it and  
9 can't be here today. Thank you, sir.

10 COMMISSIONER KOELLEIN: Thank you, sir.  
11 Ms. West?

12 MS. CAROLYN WEST: Call on Steve Xintas.

13 MR. STEVE XINTAS: Thanks very much for the  
14 opportunity of addressing you this morning. I've got  
15 to change that to this evening. My name is Steve  
16 Xintas, I own and operate Triangle Tavern, a  
17 neighborhood bar on Old Eastern Avenue in Essex. My  
18 personal opinion from what I've heard today is the  
19 lines were already drawn, people's minds are already  
20 made up and no amount of testimony is going to change  
21 anyone's mind one way or the other. I spoke with a

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1 woman outside before this all started and she's in  
2 favor of the regulation, and I asked her, just had a  
3 little conversation, idle chit-chat, was she pro choice  
4 or pro life? And she told me that she was pro choice  
5 which has nothing to do with this, but she said you're  
6 pro choice, you want me to stay out of your womb but  
7 you want to be in my restaurant. That wasn't prepared,  
8 I just through I'd throw that in.

9           The only thing I can say to a non-smoker that  
10 feels as though he or she would be able to go anywhere  
11 they wanted at any time and choose not to be exposed to  
12 someone who smokes, I agree with you to an extent, but  
13 when you attempt to force your views on my privately  
14 owned business that's where I draw the line. As long  
15 as my employees and customers are drinking and smoking  
16 legal, and I stress legal products, I will continue to  
17 allow them to do so. This is a private property issue.  
18 I own and operate a small business in Maryland. The  
19 state does not subsidize my business, I receive no  
20 grants from the state. I spend money advertising and  
21 promoting my business. My customers realize that my

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1 place of business is a smoking environment; all of my  
2 employees smoke, a higher percentage of my customers  
3 smoke than do not smoke. I personally don't, that is  
4 my choice, not government mandated. As long as I am  
5 dealing with legal products the State has no right to  
6 tell me what I can and cannot do on my own property.

7           We are dealing with a situation of ever  
8 expanding government and that government telling me  
9 what I can and cannot do. One example that I can give  
10 you of intrusion is suppose that I have a real estate  
11 office that I run out of my home and my wife is a  
12 smoker, when this regulation is adopted it would be a  
13 violation for my wife to be able to smoke in our own  
14 home because it's her workplace. This is clearly wrong  
15 and I for one, and for one person, unelected and  
16 unaccountable, should not have that kind of authority  
17 to implement a state-wide ban that would destroy the  
18 bar business and the tobacco industry in Maryland. You  
19 can say all you like about non-smoker's rights to  
20 breathe clean air, but if they come to my place of  
21 business let them be forewarned, smokers are welcome,

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1 non-smokers are a minority. I own the business and  
2 will play by my rules. If you don't want to be around  
3 smokers and a smoking environment with all due respect  
4 go somewhere else. It's your choice. Thank you very  
5 much.

6 COMMISSIONER KOELLEIN: Thank you, sir. Is  
7 that it, Ms. West?

8 MS. CAROLYN WEST: Commissioner, that's all  
9 the speakers that have signed in to speak. I would ask  
10 that I be, inform you that I've been given additional  
11 materials by Brendan Flanagan from the Maryland  
12 Restaurant Associations, and with your approval I would  
13 just add that to Exhibit number 128.

14 (The document referred to were  
15 added to Exhibit 128 which was  
16 previously identified and received  
17 into evidence.)

18 COMMISSIONER KOELLEIN: Has everyone who  
19 wanted to speak had an opportunity? If so I want to  
20 thank everyone for their cooperation, it's been a long  
21 day but I think it's been a good day. I've tried real

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1 hard to give everyone the opportunity to talk and I  
2 think we were successful.

3 The record will remain open for written  
4 comments until 5:00 p.m. on May 17th.

5 I thank everyone for coming, have a good  
6 evening.

7 (Whereupon, the proceedings were concluded.)  
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C E R T I F I C A T I O N

This is to certify that the foregoing  
transcript in the matter of:  
"Prohibition of smoking in an enclosed workplace"  
BEFORE: Henry Koellein, Jr., Commissioner  
DATE: May 3, 1994  
PLACE: Catonsville, Maryland  
represents the full and complete proceedings of the  
aforementioned matter, as reported and reduced to  
typewriting.

Barbara Lord/KB  
Barbara Lord, Reporter  
Free State Reporting, Inc.

A. Lynn Fox/KB  
A. Lynn Fox, Transcriber  
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